



**CITY OF HENDERSONVILLE**  
**CITY COUNCIL REGULAR MEETING**  
City Hall - 2nd Floor Chambers | 160 Sixth Ave. E. | Hendersonville NC 28792  
Thursday, March 04, 2021 – 5:45 PM

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## **AGENDA**

- 1. CALL TO ORDER**
- 2. INVOCATION AND PLEDGE OF ALLEGIANCE TO THE FLAG**
- 3. PUBLIC COMMENT** - *Up to 15 minutes is reserved for comments from the public not listed on the agenda.*
- 4. CONSIDERATION OF AGENDA**
- 5. CONSENT AGENDA** - *Items are considered routine, noncontroversial in nature and are considered approved by a single motion and vote.*
  - A. Adoption of City Council Minutes – *Angela Reece, City Clerk*
  - B. Henderson County Tax Adjustments - *Jennifer Musselwhite, Deputy Tax Collector*
  - C. Budget Amendments: March FY20-21 – *Adam Murr, Sr. Analyst*
  - D. Locust Street Curb, Gutter & Sidewalk – *Tom Wooten, PW Director*
  - E. Street Closure: 911 Tebeau Dr. Resolution of Intent (P21-13-SC) – *Tyler Morrow, Planner II*
  - F. Authorize Engagement of Parker Poe Adams & Bernstein, LLP, For Legal Services Related to Financing and Construction of the Parking Deck – *Angela S. Beeker, City Attorney*
  - G. Governor’s Crime Commission Technology & Rescue Grant Resolution – *Blair Myhand, HPD Chief*
  - H. Annexation: 1601 Old Spartanburg Road-Survey Resubmittal (P20-25-ANX) – *Tyler Morrow, Planner II*
- 6. PRESENTATIONS**
  - A. Introduction and Swearing In Ceremony for Chief Blair Myhand – *John Connet, City Manager*
  - B. Recognition of LuAnn Welter, MESH Public Sector Certification – *Jennifer Harrell, HR Director*
- 7. PUBLIC HEARINGS**
  - A. Conditional Rezoning: Duncan Terrace Apartments (P20-48-CZD) – *Tyler Morrow, Planner II*

- B. Conditional Rezoning: Pardee Entrance & Parking Lot (P21-03-CZD) – *Matthew Manley, Planning Manager*
- C. Special Use Permit Amendment: Beacon Commons (P21-10-SUR) – *Tyler Morrow, Planner II*
- D. Conditional Rezoning: Fleming Street Medical Office Building, P20-41-CZD – *Lew Holloway, Community Development Director*
- E. Brown Street ROW Abandonment (P21-04-SC) – *Lew Holloway, Community Development Director*

## **8. UNFINISHED BUSINESS**

## **9. NEW BUSINESS**

- A. Request from Flat Rock Playhouse for Special Funding in the FY 21-22 Budget – *Council Member Jeff Miller and Lisa Bryant, FRPH Executive Director*
- B. Berekley Road & North Main Street Intersection – *Lew Holloway, Community Development Director*
- C. Request by Bird Ride to Provide Share Ride Scooters in Downtown Hendersonville – *John Connet, City Manager*
- D. Action by Hendersonville City Council to Cease Negotiations for a Hotel on the Dogwood Parking Lot – *John Connet, City Manager*
- E. Briefing on Permitting for Duke Energy Coal Ash Contact Water – *Gracie Erwin, Environmental Compliance Coordinator, & Drew Finley, Lead for NC Fellow*

## **10. CITY COUNCIL COMMENTS**

## **11. CITY MANAGER REPORT - John F. Connet, City Manager**

- A. Fiscal Year 2021 2<sup>nd</sup> Quarter Cash and Investment Report

## **12. CLOSED SESSION - as permitted in NC General Statute § 143-318.11(a)**

- (1) to prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes; and
- (3) to consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body; and
- (5) to establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating the price and other material items of a contract for the acquisition of real property by purchase, option, exchange or lease and the amount of compensation and other material consideration of an employment contract.



### 13. ADJOURN

*The City of Hendersonville is committed to providing accessible facilities, programs and services for all people in compliance with the Americans with Disabilities Act (ADA). Should you need assistance or an accommodation for this meeting please contact the City Clerk no later than 24 hours prior to the meeting at 697-3005.*



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**SUBMITTER:** Angela Reece **MEETING DATE:** March 4, 2021

**AGENDA SECTION:** CONSENT AGENDA **DEPARTMENT:** Administration

**TITLE OF ITEM,  
Presenter Name, Title:** Adoption of City Council Minutes – *Angela Reece, City Clerk*

**SUGGESTED MOTION(S):** I move that City Council adopt the minutes of the January 27, 2021 Second Monthly meeting and February 4, 2021 Regular meetings as presented [or as amended].

### SUMMARY:

The City Clerk has prepared minutes of the following meeting(s) for Council consideration:

- i. January 27, 2021 Second Monthly Meeting
- ii. February 4, 2021 Regular Meeting (Includes reconvened portion of February 8, 2021)

**BUDGET IMPACT:** \$0

**Is this expenditure approved in the current fiscal year budget?** N/A

**If no, describe how it will be funded.**

N/A

**PROJECT NUMBER:** N/A

**PETITION NUMBER:** N/A

**ADDITIONAL PETITION NUMBER:** N/A

**PETITIONER NAME:** N/A

### ATTACHMENTS:

January 27, 2021 Second Monthly Meeting Minutes - DRAFT

February 4 & 8, 2021 Regular Session Minutes-DRAFT



# MINUTES

January 27, 2021

## SECOND MONTHLY MEETING OF THE CITY COUNCIL

CITY COUNCIL CHAMBERS - 2<sup>ND</sup> FLOOR, CITY HALL | 160 SIXTH AVE. E. 4:00 p.m.

Present: Mayor Barbara G. Volk, and Council Members: Jeff Miller, Lyndsey Simpson, and Dr. Jennifer Hensley

Remote Participants: Mayor Pro Tem Jerry Smith

Staff Present: City Manager John F. Connet, City Attorney Angela Beeker, Assistant City Manager Brian Pahle, City Clerk Angela Reece, Communications Manager Allison Justus, and others

### 1. CALL TO ORDER

Mayor Volk called the meeting to order at 4:00 p.m. and welcomed those in attendance. A quorum was established with all members in attendance. Mayor Pro Tem Jerry Smith participated in the meeting remotely via Zoom electronic software.

### 2. CONSIDERATION OF AGENDA

*Council Member Jeff Miller moved that City Council approve the agenda as presented. A unanimous roll call vote of the Council Members followed. Motion carried.*

### 3. PRESENTATIONS

- A. ESB Update, SolSmart and Cities Initiative Overview – *Michael Huffman, Stormwater Administrator, Beth Stang, Environmental Sustainability Board Chair, Zach Ambrose, Ambrose Strategy Consultant*

Beth Stang, Chair of the Environmental Sustainability Board (ESB) presented an update to City Council which focused on Bee City USA, plastics education, and the ESB Sustainability Plan. Ms. Stang thanked City Council for supporting Bee City USA and outlined accomplishments including educational events and fund-raising activities to include The Good of the Hive Bee Mural downtown. Ms. Stang discussed the importance of reduction of plastics and stated the ESB is working with Mountain Tru and the Henderson County Environmental Advisory Committee to develop a single use-plastic reduction program which is a voluntary program that will recognize businesses who commit to reducing or eliminating single-use plastics. Ms. Stang stated the ESB would like to work in conjunction with City Council and staff to develop a City-wide Sustainability Plan and encouraged the City to participate in the SolSmart Program which is a national program that recognizes cities, counties, and regional organizations who foster the development of mature local solar markets. Stormwater Administrator, Mike Huffman recalled participation progress in the program including completion of a baseline assessment of City policies and regulations related to solar energy, City Council approval of the Solar Statement in May of 2020, and ongoing review of the Zoning Ordinances. Mr. Huffman requested City to engage in the SolSmart program and to seek designation.

Zach Ambrose of Ambrose Strategy Consulting gave an overview of the Cities Initiative NC program stating the program is a collaborative effort among North Carolina local governments to work to reduce their greenhouse gas emissions. The non-profit Environmental Defense Fund (EDF) is leading this initiative. Mr. Ambrose discussed the Initiative's action items which included renewable energy procurement, developing local government supported green energy banks, and revisions to the NC Building Code.

City Manager John Connet recalled City Council initiatives which include sustainability measures to reduce light pollution and tree canopy degradation and asked City Council for direction to continue participation in the SolSmart and Cities Initiatives programs. City Council Members conceded to direct staff to proceed with the participation in both programs.

#### 4. DISCUSSION

##### A. Berkeley Mills Park Trade to HCPS

City Manager John Connet recalled discussions with John Bryant regarding the potential property trade with Henderson County Public Schools (HCPS) stating the City of Hendersonville is proposing trading a portion of Berkeley Mills Park for Edwards Park on N. Main Street. Manager Connet stated HCPS would receive a large portion of the park on the northern side of Balfour Road which includes the historic baseball field and picnic area and said that the City would maintain a small park area on the northern side as well as the entire acreage on the southern side of Balfour Road. Manager Connet stated in return for a portion of the Berkeley Mills Park, the City would assume ownership of Edwards Park, minus a small portion on the southern end of the park that includes a driveway for Bruce Drysdale Elementary School. Manager Connet stated the City's proposed use for Edwards Park would be for public recreational activities and said the Boy Scout Huts would be allowed to remain. Manager Connet stated HCPS has intentions to construct athletic facilities for Hendersonville High School including improvements to the historic baseball field, construction of a new softball field and six lighted tennis courts. Manager Connet outlined conditions of the proposed trade stating that an agreement would need to be developed with HCPS to allow continued use by the public of Berkeley Park when not in use by HCPS, including future use of the lighted tennis courts. Use by the public for the interior portions of the baseball field and future softball field may not be permitted. Manager Connet stated no Henderson County funding would be allocated for improvements for a five-year period and said that all improvements will be dependent up on private donations and donor priorities. Manager Connet addressed concerns of Council Members Miller and Smith regarding replacing trees which may be lost during development and said staff are investigating alternative planting areas and would work with HPCS to implement this in the final design. Manager Connet stated in order to continue moving forward with the proposed trade City Council would need to consider approving a letter of intent.

Council Member Jerry Smith discussed the proposed division of the property and funding challenges reminding Council there is no funding allocated by Henderson County for installation of new lighted tennis courts for at least five years. Council Member Smith also stated there was a parking concern, tree removal and replacement, and easement rights for future greenway construction to be aware of when considering this project. Council Member Jeff Miller stated he would like City Council to explore building two new tennis courts at Patton Park. Council Member Jerry Smith reminded everyone if the Council approves proceeding with this trade then they are committing to installation of a future City park and said that restroom facilities would become necessary in the future. After much discussion City Council Members conceded to proceed with forming a letter of intent to be presented for approval at the next City Council meeting.

##### B. Community Development Department Workplan – *Lew Holloway, Community Development Department Director*

Community Development Department Director Lew Holloway presented the Department Workplan to City Council and outlined the challenges and opportunities facing the department. Director Holloway introduced new staff members and discussed the focus of the department. Director Holloway recalled the formation of this Department in September 2020, stating the newly formed Department of Community Development began an internal process of generating an annual Workplan and said staff developed a project/task list which includes both discretionary and non-discretionary priorities for the department. Director Holloway stated the Department goal is to facilitate the alignment of departmental strategic priorities with City Council's vision for community development. Director Holloway outlined long-term goals encouraging the use of small area plans or district master plans as well as transportation infrastructure plans and housing master plans. City Manager John Connet stated City Council would begin to see more detail in staff reports with regard to City ordinances and the Comprehensive Plan. The City Attorney reminded everyone that the purpose of the staff report was to serve as a record of what was considered and encouraged more documentation. Council Member Lyndsey Simpson praised staff for their effort in preparing this report and stated she appreciated having more information included in the staff reports for transparency.

**5. ADJOURN**

There being no further discussion, the meeting was adjourned at 5:54 p.m. upon unanimous assent of the Council.

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Barbara G. Volk, Mayor

ATTEST:

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Angela L. Reece, City Clerk

DRAFT



# MINUTES

February 4, 2021 and February 8, 2021

## REGULAR MEETING OF THE CITY COUNCIL

CITY COUNCIL CHAMBERS - 2<sup>ND</sup> FLOOR, CITY HALL | 160 SIXTH AVE. E. 5:45 p.m.

Present: Mayor Barbara G. Volk, and Council Members: Jeff Miller and Lyndsey Simpson and Dr. Jennifer Hensley

Remote Participants: Mayor Pro Tem Jerry Smith and City Manager John F. Connet

Staff Present: Assistant City Manager Brian Pahle, City Attorney Angela Becker, City Clerk Angela Reece, Communications Manager Allison Justus and others

### 1. CALL TO ORDER

Mayor Volk called the meeting to order at 5:45 p.m. and welcomed those in attendance. A quorum was established with all members in attendance. Mayor Pro Tem Jerry Smith and City Manager John F. Connet participated in the meeting remotely via Zoom electronic software.

### 2. INVOCATION AND PLEDGE OF ALLEGIANCE TO THE FLAG

The City Council observed a moment of silence for prayer or reflection followed by the Pledge of Allegiance to the Flag.

### 3. PUBLIC COMMENT *Up to 15 minutes is reserved for comments from the public not listed on the agenda.*

*Kathy Yurista* of 103 Del and Bettys Pl. addressed City Council expressing concerns with Stay at Home Orders issued by Governor Cooper and with the CDC's guidance for mask wearing.

*Carolyn Widener* of 1235 Ransier Dr. addressed City Council expressing concerns over fears of COVID and the impacts to children vaccinations.

*Indián Jackson* of 11 Mountain Rd. addressed City Council expressing concerns of the Seventh Avenue Municipal Service District budget compared with the Main Street Municipal Service District budget.

*Jes Stafford* of 408 Deerhaven Lane addressed City Council expressing support of lifting COVID restrictions.

*Annamarie McConnell* of 1235 Ransier Dr. addressed City Council expressing support of lifting COVID restrictions.

*Bobby Roland* of 88 Little Haven Lane addressed City Council expressing support of lifting COVID restrictions.

*Raphael Morales* of 84 Toms Park Circle Apt. 15 addressed City Council expressing concern of costs of line items on the City Operation Center Improvement Project budget.

*Angela Prodrick* of Chickadee Trl. submitted written comments to City Council electronically expressing concerns of the proposed exchange of Berkeley Park.

### 4. CONSIDERATION OF AGENDA

City Manager John F. Connet requested to remove Item 9B, Consideration of Property Trade Between the City of Hendersonville and Henderson County Public Schools from consideration at this time.

*Council Member Jeff Miller moved that City Council approve the agenda as amended, removing Item 9B. A unanimous roll call vote of the Council Member followed. Motion carried.*

**5. CONSENT AGENDA****A. Adoption of City Council Minutes – Angela Reece, City Clerk****i. January 7, 2021, Regular Session**

*I move that City Council adopt the minutes of January 7, 2021 (Regular Session) as presented.*

**B. City Operations Assembly Room Upgrade, Phase II – John Connet, City Manager**

*I move to authorize the City Manager to execute an AIA change order, contract for AV equipment and related services, and contract order for furniture, for the City Operations Assembly Room project, as presented.*

**C. HR Coordinator- Diversity, Equity & Inclusion job description – Jennifer Harrell, HR Director**

*I move that City Council approve the HR Coordinator- Diversity, Equity & Inclusion job position and description as presented.*

**D. NCDOT U-5887 Highland Lake Rd Utility Agreement – Brent Detwiler, City Engineer**

*I move that City Council resolve to approve the NCDOT Utility Agreement for U-5887 Highland Lake Road; and to authorize the City Manager to execute the finalized agreement for said work; as presented and recommended by staff.*

**E. Jump Off Rock Half Marathon & 10K – Lew Holloway, Community Development Director**

*I move that City Council approve the special event permit for the Jump Off Rock Half Marathon and 10K.*

**F. Henderson County Tax Adjustments – Jennifer Musselwhite, Deputy Tax Collector**

*I move that City Council resolve to direct and authorize the tax releases submitted by Henderson County Tax Collector as presented and relieve the Henderson County Tax Collector and the Deputy Tax Collectors of the charges owed.*

**G. Resolution of Intent – Closure of a portion of Brown Street– Lew Holloway, Community Development Director**

*I move that City Council adopt the Resolution of Intent for the closing of a portion of an opened and improved ROW for Brown Street located on PIN 9569-50-9133, 9569-50-8164, 9569-50-7165 and 9568-59-9771 petitioned by Henderson County Hospital Corporation.*

**Resolution #R-21-10****RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO DECLARE THE INTENT TO CONSIDER CLOSING A PORTION OF AN OPENED AND IMPROVED ROW**

**WHEREAS**, NC General Statute 160A-299 authorizes the City Council to close public streets and alleys; and

**WHEREAS**, Henderson County Hospital Corporation has petitioned the City of Hendersonville City Council to close a portion of an open and improved ROW for Brown Street located on PIN 9569-50-9133, 9569-50-8164, 9569-50-7165 and 9568-59-9771; and

**WHEREAS**, NC General Statute 160A-299 requires that City Council conduct a public hearing for the purpose of giving consideration to the petition; and

**WHEREAS**, At the public hearing, any person may be heard on the question of whether or not the closing would be detrimental to the public interest, or the property rights of any individual.;

**NOW THEREFORE, BE IT RESOLVED** by the City Council of the City of Hendersonville, North Carolina that:

1. City Council herewith calls a public hearing to be held at 5:45 pm on the fourth day of March 2021, in the Council Chambers of City Hall to consider closing a portion of an opened and improved ROW for Brown Street. Persons shall be allowed to attend and comment in person or via Zoom at the following address:

<https://zoom.us/j/95746846396?pwd=YmlXdXdhcHJRFVlM2VElqcEVwT1ZLZz09#success>



Dial-in by phone: (646) 558-8656  
Meeting ID: 957 4684 6396  
Passcode: 28792

The public will be permitted to submit written comments for a period of twenty-four (24) hours following the close of the public hearing. Written comments may be submitted on the City's webpage at [www.hendersonvillenc.gov/public-comment](http://www.hendersonvillenc.gov/public-comment) or directly to the City Clerk, Angela Reece, [areece@hvlnc.gov](mailto:areece@hvlnc.gov), 160 6<sup>th</sup> Avenue East, Hendersonville, NC 28792.

2. The legal description for the portion of Brown Street proposed for closing is as follows:

**BEGINNING at an iron pin set, being the southwest corner of Tract 2 as described in deed book 1580 page 534; thence from said beginning point N 06°16'35" E 1.18' to a calculated and unmarked point, said point being the intersection of the east margin of the right-of-way for North Justice Street and the north margin of the right-of-way for Brown Street; thence with the north margin of the right-of-way of Brown Street S 85°10'57" E 82.28' to a calculated and unmarked point; thence S 84°21'40" E 152.77' to a calculated and unmarked point; thence S 85°12'17" E 45.79' to a calculated and unmarked point, said point being the intersection of the north margin of the right-of-way for Brown Street and the east line of that property as described in deed book 1026 page 394; thence crossing Brown Street and with the east line of said property S 05°00'21" W 20.00' to a calculated and unmarked point, said point being the intersection of the south margin of the right-of-way for Brown Street and the east line of said property; thence with the southern margin of the right-of-way of Brown Street N 85°12'17" W 45.86' to a calculated and unmarked point; thence still with the southern margin of the right-of-way N 84°21'40" W 234.92' to a calculated and unmarked point, said point lying N 04°49'03" E 0.18' from a chiseled "X" in the sidewalk, the northwest corner of the Pardee Hospital tract; thence N 04°49'03" E 18.82' to the point and place of BEGINNING. Having an area of 5,567 square feet, or 0.128 acres as shown on plat by Ownbey Land Surveying, PLLC entitled Exhibit Map Illustrating Proposed Partial Closure of Brown Street for Henderson County dated January 7, 2021.**

3. The City Clerk is hereby directed to publish this Resolution of Intent once a week for four successive weeks.
4. The City Clerk further directed to transmit by registered or certified mail to each owner of property abutting upon that portion of said street a copy of the Resolution of Intent.
5. The City Clerk is further directed to cause adequate notices of the Resolution of Intent and the scheduled public hearing to be prominently posted in at least two along the portion of Brown Street proposed for closure as required by G.S. 160A-299.

Adopted by the City Council of the City of Hendersonville, North Carolina this 4<sup>th</sup> day of February 2021.

/s/Barbara G. Volk, Mayor  
Attest: /s/Angela L. Reece, City Clerk  
Approved as to form: /s/Angela S. Beeker, City Attorney

**H. Budget Amendments: Mid-Year FY20-21 – Adam Murr, Senior Analyst**

*I move that City Council the budget amendments as presented.*

**I. Operations Support Coordinator -Revised Job Description – Jennifer Harrell, HR Director**

*I move that City Council approve the revised Operations Support Coordinator job description and pay grade as presented.*

**J. Clear Creek Greenway Water Resources Development Grant - Presenter: Brent Detwiler, Utilities Engineer**

*I move that City Council resolve to approve the NC Department of Environmental Quality's Water Resources Development Grant Agreement for the Clear Creek Greenway Project and to authorize the City Manager to execute said agreement.*

**Council Member Jeff Miller moved that City Council approve the consent agenda as presented. A unanimous roll call vote of the Council Member followed. Motion carried.**

**6. PRESENTATIONS**

**A. Quarterly MVP Recipients – John Connet, City Manager**

City Manager John Connet presented the Quarterly MVPs recognizing Scott Chovan, Wastewater Treatment Plant, Tammy Ledford, Public Works, Brendan Shanahan, Engineering, and Travis Penland

Engineering for going above and beyond their normal job duties to assist citizens by exemplifying excellent customer service. Mayor Volk also expressed thanks and appreciation to these employees.

**B. MVP of the Year – John Connet, City Manager**

City Manager John Connet presented the MVP of the Year Award to Police Officer Joreeca Dinnall, recognizing her for assisting a juvenile in crisis while she was off duty to resolve the incident. Manager Connet and Mayor Volk congratulated Officer Dinnall and thanked her for going beyond her normal job duties to assist a family in need.

## **7. PUBLIC HEARINGS**

**A. The Cedars - 227 7th Avenue West: Conditional Zoning District, P20-09-CZD – Lew Holloway, Community Development Director**

Community Development Director Lew Holloway stated the City is in receipt of a Conditional Rezoning application from Tom Shipman for the rehabilitation of one 4-story historic inn which totals 15,310 square feet and the development of two new 6 story plus basement garage buildings. He stated the Historic Inn is located along the Buncombe St. edge of the property and the other structure is located along the Church St. edge of the property. Director Holloway stated the buildings combined consist of approximately 100,000 square feet of conditioned space and said the Church Street building includes two levels of parking garage at approximately 37,500 square feet while the Buncombe Street building includes one level of parking (garage) of approximately 18,750 square feet. Director Holloway stated an atrium which is approximately 6,250 square feet connects the facilities and said the total project consists of nearly 235,000 square feet of conditioned space. Director Holloway discussed entrances to the property stating the applicant will be pursuing a NCDOT driveway permit.

The following conditions are proposed:

### **I. Stipulated Uses:**

**Only the following uses are authorized for the referenced development:**

- Condominiums
- Hotels and motels
- Conference Facilities
- Restaurants
- Parking lots and parking garages

### **II. Conditions:**

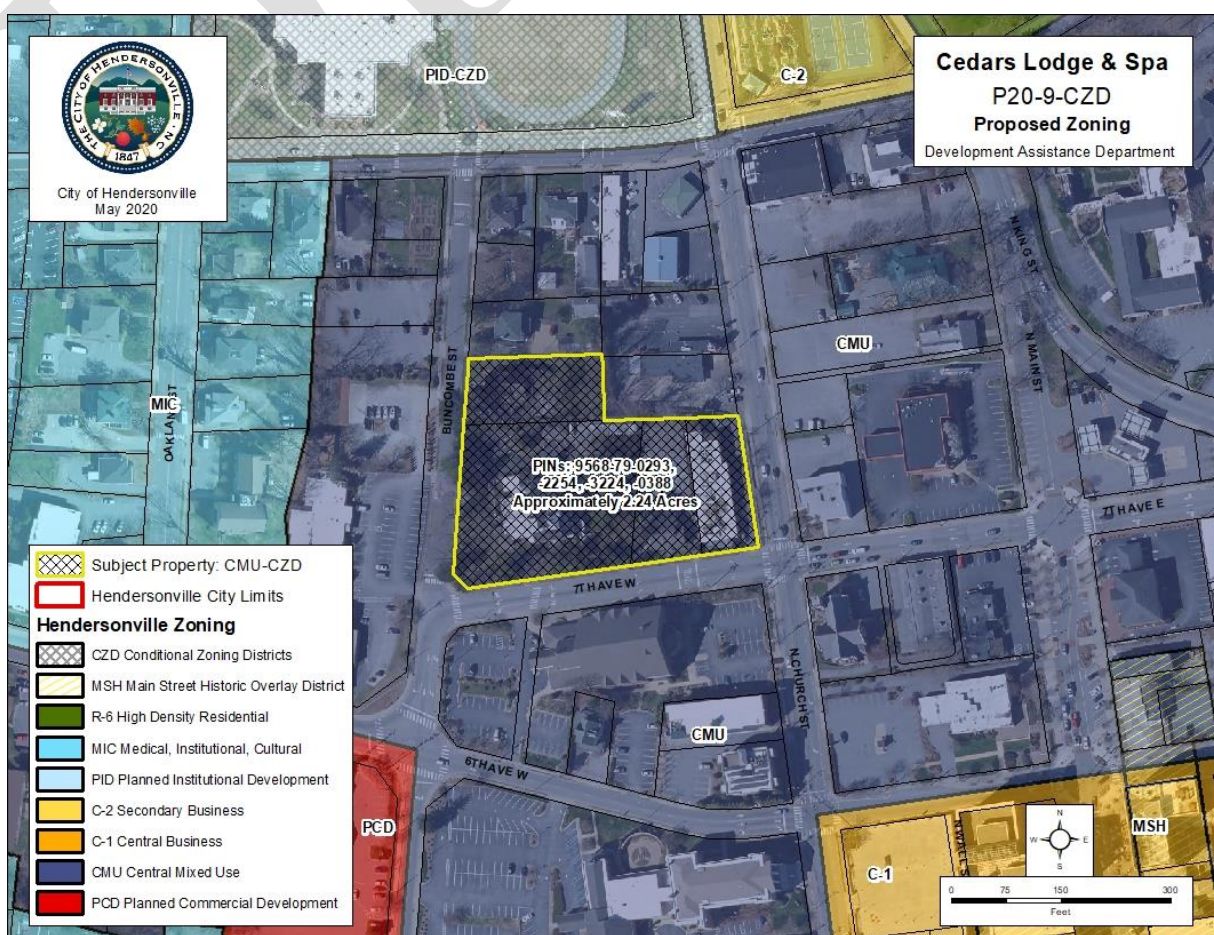
**(1) Shall Be Attached to the Conditional Rezoning and Satisfied Prior to Issuance of Final Site Plan Approval:**

- a. That the Schematic Site Plan be updated to reflect the required spot elevations and associated calculations to determine the “Average Grade.”
  - i. “Average Grade” to be established by identifying at least three spot elevations, measured at equal distances from each other and spaced no more than 50’ apart, along each façade of a building. The resultant spot elevations shall be added together and divided by the total number of spot elevations identified to determine the building’s “average grade.”
  - ii. Spot elevations shall be measured within 2’ of the building foundation and reflect the proposed finished grade for the project.
  - iii. Spot elevations shall not be taken from berms or another fill which would artificially impact the site elevation.
- b. That the “Elevations” provided as a component of the CZD application be amended to the height measured from the roof deck line on the mansard roofs.
- c. With the “Average Grade” established as described above and the point of measurement for the height of the mansard roof adjusted, the building(s) then be shown to meet the 64’ height limitation.
- d. That Ramey Kemp submit a technical memo or addendum to the TIA as a response to the comments which satisfies the concerns raised by the City’s Traffic Consultant.

- e. That NCDOT driveway permits be obtained prior to Final Site Plan Approval.
- f. That the proposed off-site parking lot be included in the schematic site plan and improved per the requirements of the Conditional Zoning District zoning and comprehensive plan standards and guidance.
- g. That a combination of planters with elevations changes and a sidewalk widened to 8' be used to enhance the pedestrian experience along the Church Street edge of the project.
- h. That the "Ballroom Patio" be better connected visually and via physical access to the sidewalk itself and that the area for pedestrian respite be integrated into this design solution.
- i. Note those trees which will be preserved during the renovation and construction process on the schematic site plan. Include a note that preservation efforts will comply with the standards set forth in Section 15-4 of the Zoning Ordinance.
- j. That all site lighting be dark sky compliant.
- k. For purposes of this conditional zoning permit, the following shall apply:
  1. A floor of a building shall be considered in residential use if at least 75% of the floor's square footage is dedicated to residential use;
  2. The 75% threshold shall be measured according to the percentage of a floor's square footage dedicated to residential use;
  3. Residential use shall mean multi-family dwelling units which (although located in the same building or on the same floor as hotel units) are not hotel units; and
  4. Classification of multi-family dwelling units as residential use versus hotel use shall be done on a calendar year basis; and
  5. Hotel units shall mean those multi-family dwelling units used or available for use as short-term rentals for more than 250 days during a calendar year; and
  6. The offering of multi-family dwelling units for short term rentals shall not disqualify such units from being considered "residential"; and
  7. Short term rentals are defined as rental stays which do not exceed 30 consecutive calendar days; and
  8. If the standards for height in the CMU district become less restrictive via a text amendment to the City of Hendersonville Zoning Ordinance, then the less restrictive standards would apply to this project from the date of the adoption of the ordinance amendment.

**(2) Shall Be Attached to the Conditional Rezoning:**

Final plans for the project shall comply with approved plans, the conditions agreed to on the record of this proceeding and applicable provisions of the Hendersonville Zoning Ordinance and Code of Ordinances.



The City Clerk confirmed the public hearing has been advertised in accordance with General Statutes. The public hearing was opened at 6:27 p.m.

*Ken Fitch* of 1046 Patton St. addressed City Council electronically via Zoom expressing concerns regarding traffic impact and tree canopy.

*Lynn Williams* of 309 Chadwick Ave. addressed City Council electronically via Zoom expressing concerns regarding tree canopy and stated having a review by the Tree Board was important.

*Melanie Ricardson* of 11 Tisha Lane submitted written comments to City Council electronically stating she was in favor of the proposed rezoning

Project Developer Tamara Peacock addressed City Council regarding the project design acknowledging concerns regarding the trees stating they are planting 21 mature red maples along all sides of the project and are preserving trees along the gazebo area. Ms. Peacock stated they are interested in preserving the green space. Ms. Peacock addressed traffic circulation inquiries stating one entrance would be dedicated only for residential use and confirmed there would be a valet and said the REMAX lot will be utilized as backup for additional parking for the hotel portion.

There were no other comments at this time. The public hearing was closed at 6:39 p.m.

Mayor Volk advised due to Members of City Council participating remotely, the public will be given an additional 24 hours to comment on this hearing and said this hearing will be continued to Monday, February 8, 2021 at 5:15 p.m. , electronically using the same log in and physical location information as advertised for this meeting.

**B. Conditional Rezoning: Fleming Street Medical Office Building, P20-41-CZD – Tyler Morrow, Planner**

Planner Tyler Morrow stated the City is in receipt of a Conditional Rezoning application from Carleton Collins of Carleton Collins Architecture and CCP Fleming LLC for the development of a 3 story 13,536 square foot medical office on approximately 0.86 acres. He stated the subject property is currently vacant and is identified as parcel numbers 9569-60-1341 and 9569-60-1454 is currently vacant and said the applicant is requesting to rezone the subject property from MIC Medical, Institutional, Cultural and MIC-SU Medical, Institutional, Cultural, Special Use to MIC-CZD Medical, Institutional, Cultural Conditional Zoning District. Mr. Morrow stated the Planning Board has recommended the following conditions for this conditional rezoning application.

The following conditions were proposed:

**I. Stipulated Uses:**

**Only the following uses are authorized for the referenced development:**

- Offices, business, professional and public
- Personal services consistent with the purposes of this classification, such as medical & dental labs and clinics, opticians & optical services and prosthetics & orthopedics

**II. Conditions:**

**(1) Shall Be Attached to the Conditional Rezoning and Satisfied Prior to Issuance of Final Site Plan Approval:**

1. That the building be relocated on the site plan to sit on the front setback line and that the parking located at the front of the property be relocated to the side and rear of the site plan to conform to the Comprehensive Plan's guidance to use a "minimal front setback" and limit parking to the "rear and side only."
2. That a stormwater management plan be submitted by the applicant demonstrating compliance with Chapter 24 Article 3: Stormwater Ordinance in the City Code of Ordinances.

**(2) Shall Be Attached to the Conditional Rezoning:**



3. Final plans for the project shall comply with approved plans, the conditions agreed to on the record of this proceeding and applicable provisions of the Hendersonville Zoning Ordinance and Code of Ordinances.
4. That the existing type B buffer along the western property line of parcel number 9569601454 and the existing buffer along the western property line of parcel number 9569601341 be preserved during the redevelopment of the site in accordance with Section 15-4 Existing Vegetation of the City's zoning ordinance.
5. That site lighting be dark sky compliant

Council Member Jeff Miller expressed concerns of preserving the existing vegetation buffer and Mr. Morrow stated staff is asking for direction from City Council as to whether or not to leave the current buffer and supplement it or to install a new one in accordance with the ordinance. Council Member Dr. Jennifer Hensley expressed concerns of the facility having adequate parking available. Council Member Jerry Smith expressed concerns regarding square footage in relation to required parking spaces and size of the proposed facility.

Project Developer Carleton Collins addressed City Council asking for consideration of approval to address the need for high quality office space needs in the area. Mr. Collins stated the sketch presented to Council was not a final design and clarified the position of the building will require modifications to setbacks on the lot to provide maximum space and to determine final building size and parking requirements. Mr. Collins stated there was nothing formal in place at this time.

The City Clerk confirmed the public hearing has been advertised in accordance with General Statutes. The public hearing was opened at 7:18 p.m.

*Lynn Williams* addressed the City Council by Zoom of 309 Chadwick Ave. expressed support for condition 2, preserving existing buffers and include Tree Board feedback.

*Ken Fitch* of 1046 Patton St. addressed City Council by Zoom expressing concerns of neighborhood compatibility and proposed size of the project.

*Zach Forrest* of 520 Fassifern Court submitted written comments electronically and addressed City Council via Zoom expressing concerns of the project regarding landscaping and tree removal, size of building, retaining walls, and drainage as well as lighting at night asking City Council not to allow the project to move forward until an official site plan was reviewed and approved.

***Council Member Lyndsey Simpson moved that City Council continue the public hearing for Conditional Zoning District – Carleton Collins Architecture, PLLC - Application for a conditional rezoning of the subject property, PIN 9569-60-1341 and 9569-60-1454, located at 903 & 919 Fleming Street, from MIC, Medical, Institutional and Cultural District to MIC CZD, Medical, Institutional and Cultural Conditional Zoning District to their next regularly scheduled meeting on Thursday March 4, 2021 at 5:45 p.m. or as soon thereafter as possible. A unanimous roll call vote of the Council Member followed. Motion carried.***

**8. UNFINISHED BUSINESS** There was no unfinished business.

Mayor Barbara G. Volk briefly recessed the meeting for a short break at 7:37 p.m. and reconvened at 7:44 p.m. All members continuously remained in attendance.

**9. NEW BUSINESS**

**A. Billing Policy Update -Leak Adjustments - Jennifer Musselwhite, Revenue Supervisor**

Finance Director John Buchanan presented a billing policy amendment for utility customers applying for a leak adjustment and said the change would approve the adjustment process for leak requests that are submitted to the Finance Department. Director Buchanan stated the proposed revision would eliminate the requirement for customers to provide proof of repair documents which are receipts or itemized plumbers' invoices. He stated the proposed revision would allow residential customers to have a flat amount adjustment based on the meter size of the customer account. Director Buchanan stated staff have updated policy definitions and said these changes are to simplify customer requirements and streamline the leak adjustment policy procedure.

*Council Member Lyndsey Simpson moved that City Council approve the Billing Policy Leak Adjustments changes as presented. A unanimous roll call vote of the Council Member followed. Motion carried.*

**~~B. REMOVED: Consideration of Property Trade Between the City of Hendersonville and Henderson County Public Schools~~** — ~~John Connet, City Manager and City Attorney Angie Beeker~~

**C. Contract Award – Hebron Pressure Zone Water Improvements** – Adam Steurer, Utilities Engineer

City Manager John Connet recalled receiving bids for the construction of the proposed Hebron Pressure Zone Water Improvements for installation of approximately 2,075 linear feet of 6-inch and 8-inch diameter ductile iron water main and appurtenances; two master meter vaults; and abandonment of an existing water pumping station. Manager Connet stated the project's intent is to boost insufficient water pressures and available fire flows for existing City water customers in the project area.

which is located off of White Pine in the Town of Laurel Park. Utilities Engineer Adam Steurer stated the City received 8 bids and said the lowest responsive bid came from Huntley Construction in the amount of \$380,467.

*Council Member Jeff Miller moved City Council resolve to authorize the City Manager to award and execute a contract for the construction of the Hebron Pressure Zone Water Improvements in the amount of \$380,467 with Huntley Construction Company, the lowest responsive and responsible bidder and authorize the City Manager to approve change orders up to 10% of the contract amount, not to exceed budgeted funds available in the capital project ordinance; as presented and recommended by Staff. A unanimous roll call vote of the Council Member followed. Motion carried.*

**10. CITY COUNCIL COMMENTS**

Council Member Lyndsey Simpson requested City Council formally consider forming a Diversity & Inclusion Committee.

Mayor Barbara G. Volk expressed thanks and appreciation to the City's Public Works staff for being courteous to pedestrians while tending to the greenway.

Council Member Jerry Smith asked City Manager Connet to clarify on the Main Street and Seventh Avenue Municipal Service District Budgets. Manager Connet reminded everyone the City is required to have a balanced budget and said that the Municipal Service Districts (MSD) were set up at different times in order to provide improvements to each of the districts and said the funding comes from additional property taxes that property owners in each district must pay in order to receive additional services in that district. Manager Connet clarified that the rates for each district are different and said the Main Street MSD pays \$0.27 per \$100.00 of valuation and Seventh Ave. MSD pays \$0.17 per \$100.00 of valuation thereby each district generates a different amount of revenue. Manager Connet stated there are more property owners in the Main Street MSD paying higher tax which is generating a higher amount of revenue and said this is why their budget is larger and reminded everyone that revenues must match expenditures for each district. Manager Connet reminded everyone of the Seventh Avenue Streetscape project and said the City will be investing \$1M into the Seventh Avenue area later this year.

**11. CITY MANAGER REPORT** – John F. Connet, City Manager

City Manager Connet inquired of City Council's preference for participation in the Cities Initiative. Council Member Jerry Smith stated he believes this is a great network for the City Manager to be involved in and is in favor of the project. City Council Members agreed to move forward with participation in the project. Manager Connet also discussed signage in the Green Meadows Community and stated there were several ideas for signage and asked direction from City Council to proceed with engaging a signage firm to coordinate this project and to place a temporary sign. City Council Members agreed to move forward with the signage with considerations of obtaining easements for placement of the signage. Manager Connet also announced the implementation of the new Citizen Reporting App which will replace the "report a problem" application on the City's website. Manager Connet stated this application was developed in house by staff and will allow

citizens to select a location on a map and attach a photo of the issue. The application will go live on the City's website soon.

## **12. BOARDS/COMMISSIONS/COMMITTEE APPOINTMENTS**

### **A. Downtown Advisory Board Merger – *Jamie Carpenter, Downtown Manager***

Downtown Manager, Jamie Carpenter presented a Resolution to merge the Downtown (Main Street) Advisory Committee and Seventh Avenue Advisory Committee to form one Downtown Advisory Board composed of equal representation from both districts with a total membership of 14 voting members and 2 non-voting members. Ms. Carpenter stated the merger is being recommended by vote of both the Downtown Main Street Advisory Committee and the Seventh Avenue Advisory Committee and said staff recommends the merger in order to follow the pillars of the Main Street Four Point Approach™ being design, promotion, economic vitality and organization.

*Council Member Lyndsey Simpson moved that City Council adopt the resolution to merge the Downtown Main Street Advisory Committee and Seventh Avenue Advisory Committee to form the Downtown Advisory Board and to adopt the Charter & Rules of Procedure as presented. A unanimous roll call vote of the Council Member followed. Motion carried.*

**Resolution #R-21-11**

### **RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO MERGE THE DOWNTOWN ADVISORY COMMITTEE AND 7<sup>TH</sup> AVENUE ADVISORY COMMITTEE TO CREATE A DOWNTOWN ADVISORY BOARD**

**WHEREAS**, the Downtown Main Street Advisory Committee was established June 2, 2011 to advise and recommend updates to Hendersonville City Council regarding the Downtown Municipal Service District; and

**WHEREAS**, the 7<sup>th</sup> Avenue Advisory Committee was established March 9, 2015 to advise and recommend updates to Hendersonville City Council regarding the 7<sup>th</sup> Avenue Municipal Service District; and

**WHEREAS**, the Downtown Main Street Advisory Committee and 7<sup>th</sup> Avenue Advisory Committee share a common vision for the overall economic vibrancy of Downtown Hendersonville; and

**WHEREAS**, Historic Downtown Hendersonville was designated a North Carolina Main Street Program in 1986 and has been recognized as a nationally accredited Main Street Program; and

**WHEREAS**, best practices of nationally Accredited Main Street Programs include one advisory board with three teams to follow the pillars of the Main Street Four Point Approach™ being design, promotion, economic vitality and organization; and

**WHEREAS**, in a joint meeting of the Downtown Main Street Advisory committee and 7<sup>th</sup> Avenue Advisory Committee held December 8, 2020 members of both committees approved a recommendation to merge to form a Downtown Advisory Board; and

**NOW THEREFORE, BE IT RESOLVED** by the City Council of the City of Hendersonville, North Carolina that:

1. The Downtown Main Street Advisory Committee and 7<sup>th</sup> Avenue Advisory Committee are hereby merged and to form the **Downtown Advisory Board**.
2. The Downtown Main Street Advisory Committee and 7<sup>th</sup> Avenue Advisory Committee and their subcommittees are hereby disbanded; and
3. The merged Downtown Advisory Board is hereby established, and the Charter & Rules of Procedure are hereby approved as presented.
4. The Downtown Advisory Board shall consist of sixteen (16) members, including (14) voting members and (2) non-voting members. Membership shall be composed from the following membership categories:
  - (5) Stakeholders representing Seventh Avenue Municipal Service District (all voting members)
  - (5) Stakeholders representing Main Street Municipal Service District (all voting members)
  - (4) At-large members (all voting members)
  - (1) City Council liaison member (non-voting member)
  - (1) Representative from the Hendersonville Rescue Mission (non-voting member)



Adopted by the City Council of the City of Hendersonville, North Carolina this 4<sup>th</sup> day of February 2021.

/s/Barbara G. Volk, Mayor

Attest: /s/Angela L. Reece, City Clerk

Approved as to form: /s/Angela S. Beeker, City Attorney

**B. Appointment to Downtown Advisory Board – Angela Reece, City Clerk**

*Council Member Jerry Smith moved to suspend the rules to allow City Council to vote on all appointments with one motion. A unanimous roll call vote of the Council Member followed. Motion carried.*

*Council Member Jerry Smith nominated Becky Ayers, and Matthew Hickman each to fill a 3-year & 5-month term as a Stakeholder of the Seventh Avenue MSD on the Downtown Advisory Board ending June 30, 2024.*

*Council Member Jeff Miller nominated Caroline Gunther and Carol Sitzler each to fill a 3-year & 5-month term as a Stakeholder of the Main Street MSD on the Downtown Advisory Board ending June 30, 2024.*

*Council Member Lyndsey Simpson nominated John Ryan, and Chris Cormer each to fill a 2-year & 5-month term as a Stakeholder of the Seventh Avenue MSD on the Downtown Advisory Board ending June 30, 2023.*

*Council Member Dr. Jennifer Hensley nominated Matt Johnes, and Jared Bellmund each to fill a 2-year & 5-month term as a Stakeholder of the Main Street MSD on the Downtown Advisory Board ending June 30, 2023.*

*Council Member Jerry Smith nominated Mark Pavao to fill a 1-year & 5-month term as a Stakeholder of the Main Street MSD on the Downtown Advisory Board ending June 30, 2023.*

*Council Member Jeff Miller nominated City Council Member Lyndsey Simpson to fill a 1-year & 5-month term as a liaison (non-voting) on the Downtown Advisory Board ending June 30, 2022.*

*Council Member Lyndsey Simpson nominated the Director or Designee from Hendersonville Rescue Mission to fill a 1-year & 5-month term representing the Hendersonville Rescue Mission as a liaison (non-voting) on the Downtown Advisory Board ending June 30, 2022.*

*Council Member Jeff Miller nominated Walt Slagel, and Patsy Dupre each to fill a 2-year & 5-month term as an At Large Member on the Downtown Advisory Board ending June 30, 2023.*

*Council Members unanimously moved that City Council approve the nominations as presented. A unanimous roll call vote of the Council followed. Motion carried.*

**C. Animal Services Advisory Committee Charter Amendment – Angela Reece, City Clerk, Angela Beeker, City Attorney**

City Attorney Angela S. Beeker stated staff have worked in conjunction with the Animal Services Advisory Committee to clarify and restate elements of their Charter & Rules of Procedure. Attorney Beeker stated she has clarified and added sections pertaining to quasi-judicial proceedings and said staff met with the Animal Services Advisory Committee at their meeting whereupon these amendments were approved by vote of the Committee. Attorney Beeker advised City Council that she has conducted trainings on quasi-judicial training with the Animal Services Advisory Committee.

*Council Member Jeff Miller moved that City Council adopt the amended Charter & Rules of Procedure for the Animal Services Advisory Committee as presented. A unanimous roll call vote of the Council followed. Motion carried.*

**13. CLOSED SESSION**

*At 9:12 p.m. City Council Member Jerry Smith moved that City Council enter into closed session pursuant to NCGS § 143-318.11(a)(1) and (3) to prevent the disclosure of information that is privileged or confidential; to consult with an attorney employed by the*

*public body in order to preserve the attorney-client privilege between the attorney and the public body and to discuss and give instructions regarding the following matters: Hansley vs. City of Hendersonville, 20 CVS 1049, Henderson County Superior Court, and City of Hendersonville v. Eisenhauer, 20 CVS 1163, Henderson County Superior Court. A unanimous roll call vote of the Council followed. Motion carried.*

*Council Member Lyndsey Simpson moved that City Council return to Open Session at 9:56 p.m. A unanimous roll call vote of the Council followed. Motion carried.*

The meeting was recessed at 9:56 p.m. on February 4, 2021 upon unanimous assent of the Council and scheduled to reconvene on Monday, February 8, 2021 by electronic Zoom software using the same access information as advertised for this meeting.

**February 8, 2020      [ELECTRONIC]**  
**RECONVENED REGULAR MEETING OF THE CITY COUNCIL**

Participating Electronically: Mayor Barbara G. Volk, Mayor Pro Tem Jerry Smith, and Council Members: Jeff Miller, Dr. Jennifer Hensley, and Lyndsey Simpson

Staff Participating Electronically: City Manager John F. Connet, City Attorney Angela S. Beeker, Assistant City Manager Brian Pahle, City Clerk Angela Reece, Communications Manager Allison Justus and others.

**1. CALL TO ORDER**

Mayor Barbara G. Volk reconvened the meeting at 5:15 p.m. and welcomed those in attendance. A quorum was established with all members in attendance participating remotely via Zoom.

**PUBLIC HEARING CONTINUED: The Cedars - 227 7th Avenue West: Conditional Zoning District, P20-09-CZD**

Lynn Williams of 309 Chadwick Ave. submitted written comments electronically expressing ongoing concerns of tree canopy preservation and urging City Council to solicit feedback from the Tree Board.

There were no further comments.

*Council Member Lyndsey Simpson moved that City Council adopt an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of the subject property from CMU, Central Mixed Use to CMU CZD, Central Mixed Use Conditional Zoning District, based on the site plan submitted by the applicant and subject to the limitations and conditions stipulated on the List of Uses and Conditions, finding that the rezoning is consistent with the Comprehensive Plan's Future Land Use map, and that the rezoning is reasonable and in the public interest in that it is a beneficial project for the local economy and area. A unanimous roll call vote of the Council followed. Motion carried.*

**Ordinance #O-21-02**

**AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND THE OFFICIAL ZONING MAP OF THE CITY OF HENDERSONVILLE FOR 227 7<sup>th</sup> AVENUE WEST – THE CEDARS BY CHANGING THE ZONING DESIGNATION FROM CMU: CENTRAL MIXED-USE DISTRICT TO CMU CZD: CENTRAL MIXED-USE CONDITIONAL ZONING DISTRICT**

IN RE:                    227 7<sup>th</sup> Avenue West – The Cedars  
                              (File # P20-09-CZD)  
                              PIN # 9568-79-3224, 9568-79-2254, 9568-79-0293 and 9568-79-0388

**WHEREAS**, the City is in receipt of a Conditional Rezoning application from Tom Shipman for the rehabilitation of one 4-story historic inn and the development of two, 6 story plus basement garage, condominium towers.

**WHEREAS**, the Planning Board took up this application at its regular meeting on December 14<sup>th</sup>, 2020; voting to recommend City Council adopt an ordinance amending the official zoning map of the City of Hendersonville, and

**WHEREAS**, City Council took up this application at its regular meeting on January 7<sup>th</sup>, 2021, and

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Hendersonville, North Carolina:

1. Pursuant to Article XI of the Zoning Ordinance of the City of Hendersonville, North Carolina, the Zoning Map is hereby amended by changing the zoning designation of the following:  
  
Parcels 9568-79-3224, 9568-79-2254, 9568-79-0293 and 9568-79-0388 from CMU Central Mixed-Use District to CMU-CZD Central Mixed-Use Conditional Zoning District.
2. Development of the parcels shall occur in accordance with the final site plan requirements of Article VII of the Zoning Ordinance of the City of Hendersonville, North Carolina, and shall be subject to the site limitations and conditions stipulated on the published List of Uses and Conditions.
3. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted by the City Council of the City of Hendersonville, North Carolina this 8<sup>th</sup> day of February 2021.

/s/Barbara G. Volk, Mayor

Attest: /s/Angela L. Reece, City Clerk

Approved as to form: /s/Angela S. Beeker, City Attorney

#### **14. ADJOURN**

There being no further business, the meeting was adjourned at 5:19 p.m. on February 8, 2021 upon unanimous assent of the Council.

\_\_\_\_\_  
Barbara G. Volk, Mayor

ATTEST:

\_\_\_\_\_  
Angela L. Reece, City Clerk



# CITY OF HENDERSONVILLE

## AGENDA ITEM SUMMARY

<b>SUBMITTER:</b>	Jennifer Musselwhite	<b>MEETING DATE:</b>	3/4/2021
<b>AGENDA SECTION:</b>	Council Action	<b>DEPARTMENT:</b>	Finance
<b>TITLE OF ITEM, Presenter Name, Title:</b>	Henderson County Tax Adjustments- <i>Jennifer Musselwhite, Deputy Tax Collector</i>		
<b><u>SUGGESTED MOTION(S):</u></b>	I move that City Council resolve to direct and authorize the tax releases submitted by Henderson County Tax Collector as presented and relieve the Henderson County Tax Collector and the Deputy Tax Collectors of the charges owed.		

### SUMMARY:

The Deputy Tax Collector, Jennifer Musselwhite, would like to submit for your approval the tax bill adjustments occurring between January 20, 2021 and February 15, 2021. These adjustments include all Discoveries, Releases, Refunds, and Forgiven Interest. These adjustments were provided by Henderson County Tax Department. Documentation is available in the Tax Office.

**BUDGET IMPACT:**     \$ 0.00

**Is this expenditure approved in the current fiscal year budget?** YES / NO

**If no, describe how it will be funded.**

EnterTextHere

**PROJECT NUMBER:** N/A

**PETITION NUMBER:** N/A

**ADDITIONAL PETITION NUMBER:** N/A

**PETITIONER NAME:** N/A

### ATTACHMENTS:

Summary Total of Tax Adjustments

**SUMMARY TOTAL OF DISCOVERIES, RELEASES, REFUNDS, AND FORGIVEN INTEREST**

FOR TRANSACTIONS AS OF 2/15/2021

<i>VALUE CHANGE</i>	\$	(47,326.00)
<i>RELEASES</i>	\$	(260.04)
<i>REFUNDS</i>	\$	(32.79)
<i>FORGIVEN INTEREST</i>	\$	-
<b>TOTAL TAX BILL ADJUSTMENTS</b>	<b>\$</b>	<b>(292.83)</b>

*Adjustments, Releases, Refunds are provided by Henderson County Tax*

## NCPTS Pending Release/Refund Report. Monday, February 15, 2021\*

TAX DISTRICT	OWNER	ABSTRACT	NOTE	VALUE CHANGE	ADJ. NUMBER	DISTRICT CODE	LEVY TYPE	BILLED	PAID	RELEASE
CITY OF HENDERSONVILLE	KILPATRICK LAND SURVEYING PLLC	0003088451-2020-2020-0000	BUSINESS SOLD 12/19/19.	(\$41,326)	7598	JURSC10	TAX	\$202.50	\$0.00	\$202.50
							LATE LIST FEE	\$20.25	\$0.00	\$20.25
							TOTAL:			\$222.75
									ABSTRACT TOTAL:	\$222.75
		OWNER TOTAL:		\$0						\$222.75
		DISTRICT TOTAL:		(\$41,326)						\$222.75



# NCPTS Bill Detail

Section 5, Item B.

NCPTS Assessment

JMIRANDA

Search

Abstract #

Tax Year: 2020 Go

Abstract

Registrars

Appeal

Workflow

Admin

Options

Help

NCPTS -> Assessment -> Abstract -> Bill Detail

PDF Export  
Bill #: 0002693757-2018-2018-0000-00  
REG  
Bill Status: PAID  
Returned Mail: NA

Interest Recalc. Release Bill Prorate Bill Print  
Pay Bill Void Bill

## Taxpayer Info

Owner Id	ID Number	COA Code	Confidential	Name	Mailing Address	Ownership Type	Owner Order	Ownership %	Group Number	Send Mail	Relief Eligibility
1012120	COUNTY-988600		NO	MONTE'S SUB SHOP INC	DAN RUIZ 2024 ASHEVILLE HWY STE H HENDERSONVILLE NC 28791		PRIMARY			YES	NO

## Property Info

	Value (\$)	Adj Value (\$)
Real:	0	0
Deferred:	0	0
Use:	0	0
Personal:	39,470	33,826
Exempt:	0	0
Total Value:	39,470	33,826

## Bill Info

Source Type/System: BUS PROPERTY TAX  
Abstract #: 0002693757-2018-2018-0000  
Bill Date: 07/18/2018 Created By: IISSUPP  
Interest Begin Date: 01/08/2019 Interest Freeze Date:  
Bill Due Date: 09/01/2018 Final Payment Date: 11/06/2020

## Tax Amount

Lender:  
Description: BUSINESS PERSONAL PROPERTY  
Situs: 2024 ASHEVILLE HWY HENDERSONVILLE NC 28792

# Months	Description	Original Billed (\$)	Current Due (\$)
	Tax & Fees	245.31	0.00
	HENDERSON COUNTY		
12	TAX	223.01	0.00
12	LATE LIST PENALTY	22.30	0.00
	Interest		0.00
	Collection Fees		0.00
	Expenses		0.00
	Total	245.31	0.00

Personal Property listing information redacted.

## Payment History

## Transaction Summary

## Transaction Detail History

Flag Link IDs Agents Notes/Documents Change History Owner History

Flag: Apply Flag Remove Flag

Adjustment created to correct a clerical error for 2018.

\$ 32.79 Refund

36.80 TAX & LL

1.99 Interest

\$ 32.79



PDF

Export

Interest Recalc

Release Bill

Prorate Bill

Print

Bill #: 0000280879-2018-2018-0000-01 REG

Bill Status: FULL RELEASE Returned Mail: NA

Pay Bill

Void Bill

## Taxpayer Info

Owner Id	ID Number	COA Code	Confidential	Name	Mailing Address	Ownership Type	Owner Order *	Ownership %	Group Number	Send Mail	Relief Eligibility
2098141	SOCIAL-243-92-9415		NO	RADCLIFFE, RICHARD	135 ASH PATH LN HENDERSONVILLE NC 28739	INDIVIDUAL	PRIMARY			YES	NO

## Property Info

	Value (\$)	Adj Value (\$)
Real:	0	0
Deferred:	0	0
Use:	0	0
Personal:	6,000	0
Exempt:	0	0
Total Value:	6,000	0

Lender:  
Description: VOIDED  
Situs: 135 ASH PATH LN HENDERSONVILLE NC 28739

## Property Details

Type	Description	Assessed
MfdHome	1982 CHAL 14X54 SUMMERPATH MOBILE VILLAGE 47	0

## Bill Info

Source Type/System: IND PROPERTY TAX  
Abstract #: 0000280879-2018-2018-0000  
Bill Date: 07/18/2018 Created By: RJONES  
Interest Begin Date: 01/08/2019 Interest Freeze Date:  
Bill Due Date: 09/01/2018 Final Payment Date:

## Tax Amount

# Months	Description	Original Billed(\$)	Current Due (\$)
	Tax & Fees	37.29	0.00
	HENDERSON COUNTY		
12	TAX	33.90	0.00
12	LATE LIST PENALTY	3.39	0.00
	Interest		0.00
	Collection Fees		0.00
	Expenses		0.00
	Total	37.29	0.00

## Payment History

## Transaction Summary

## Transaction Detail History

Flag

?

Link IDs

?

Agents

?

Notes/Documents

?

Change History

Owner History

Flag: ☐ Apply Flag Remove Flag

manufactured home not owned by  
this taxpayer since 2017.



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**SUBMITTER:** Adam Murr **MEETING DATE:** March 4, 2021

**AGENDA SECTION:** Council Action **DEPARTMENT:** Administration

**TITLE OF ITEM, Presenter Name, Title:** Budget Amendments: March FY20-21  
– Adam Murr, Sr. Analyst

**SUGGESTED MOTION(S):**

1. I move the City Council increase the City Operations and City Hall upgrades project (Fund 410 and 460, Project 19140) by \$126,724 by transferring \$63,362 from the General Fund and \$63,362 from the Water and Sewer Fund.
2. I move the City Council increase the Governor’s Crime Commission grant (Fund 301, Project 00420) revenue by \$24,480 and increase the Non-Capital Equipment expenditure line item by \$24,480.

### SUMMARY:

1. Budget amendment to increase the City Hall and City Operations Facility project by a total of \$126,724 for the purchase of audio/video equipment at the Operations Center.
2. Budget amendment to increase the Governor’s Crime Commission by a total of \$24,480 for the purchase of police radios, tasers (including warranties and cartridges), and stop bleed kits.

**BUDGET IMPACT:**

410 (19140) – Governmental Capital Project Fund	\$63,362 increase
460 (19140) - Water and Sewer Capital Project Fund	\$63,362 increase
301 (00420) – Grant Fund	\$24,480

**Is this expenditure approved in the current fiscal year budget?** N/A

**If no, describe how it will be funded.**

N/A

**PROJECT NUMBER:** N/A

**PETITION NUMBER:** N/A

**ADDITIONAL PETITION NUMBER:** N/A

**PETITIONER NAME:** N/A

### ATTACHMENTS:

Budget Amendments

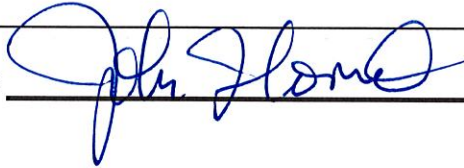
## BUDGET AMENDMENT

410 | 460

ACCOUNT NUMBER	DESCRIPTION OF ACCOUNT	INCREASE	DECREASE
410-0000-470100-19140	Transfer in (From GF)	63,362.00	-
410-1002-550103-19140	Capital Outlay CIP	63,362.00	-
FUND 410	TOTAL REVENUES	63,362.00	-
	TOTAL EXPENDITURES	63,362.00	-
460-0000-470100-19140	Transfer in (From WS)	63,362.00	-
460-1002-550103-19140	Capital Outlay CIP	63,362.00	-
FUND 460	TOTAL REVENUES	63,362.00	-
	TOTAL EXPENDITURES	63,362.00	-

A budget amendment to increase a transfer in to project 19140 for City Operations Center A/V upgrades.

City Manager Approval:



Date:

2/23/21

Draft Date:

2/23/2021

## BUDGET AMENDMENT

301

ACCOUNT NUMBER	DESCRIPTION OF ACCOUNT	INCREASE	DECREASE
301-0000-420050-00420	Governor's Crime Commission Technology and Rescue Grant Revenue	24,480	-
301-1300-534000-00420	Governor's Crime Commission Technology and Rescue Grant Revenue	24,480	
FUND 301	TOTAL REVENUES	24,480	-
	TOTAL EXPENDITURES	24,480	-

A budget amendment to increase revenue to be awarded by the Governor's Crime Commission for Technology and Rescue Grant. This grant award will be used to purchase, four (4) police radios, six (6) Taser's, warranty and cartridges, forty (40) Stop the bleed IFAK kits for our police officers.

City Manager Approval:



Date:

2/23/21

Draft Date:

2/23/2021



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**SUBMITTER:** Tom Wooten                      **MEETING DATE:** March 4, 2021

**AGENDA SECTION:** CONSENT                      **DEPARTMENT:** Public Works

**TITLE OF ITEM, Presenter Name, Title:** Locust Street Curb, Gutter & Sidewalk – *Tom Wooten, PW Director*

**SUGGESTED MOTION(S):** I move that City Council award the Locust Street Curb & Gutter and Sidewalk Replacement Project to Trace and Company as the lowest responsive, responsible bidder, for the amount of \$225,751.00 and authorize the City Manager to sign the construction agreement in such form as is approved by the City Attorney.

**SUMMARY:** Staff has received three formal bids were opened on February 19, 2021 at 9:00 AM. Trace and Company submitted the lowest responsive responsible bid for the project.

**BUDGET IMACT:**        \$225,751.00

**Is this expenditure approved in the current fiscal year budget?** YES – Powell Bill Fund

**If no, describe how it will be funded.**

**PROJECT NUMBER:** N/A

**PETITION NUMBER:** N/A

**ADDITIONAL PETITION NUMBER:** N/A

**PETITIONER NAME:** N/A

**ATTACHMENTS:**

Bid Package

Bid Tabulation Sheet

# **SPECIFICATIONS**

## **2021 Locust St Curb & Gutter and Sidewalk**

Hendersonville, NC

City of Hendersonville  
Public Works Department  
305 Williams Street Hendersonville,  
North Carolina 28792 (828) 697-3084  
[twooten@hvlnc.gov](mailto:twooten@hvlnc.gov)  
[cfreeman@hvlnc.gov](mailto:cfreeman@hvlnc.gov)  
FAX: (828) 697-3089

# **2021 Locust St Curb & Gutter and Sidewalk**

*Section 5, Item D.*

## **TABLE OF CONTENTS**

<b>INVITATION FOR BIDS</b>	<b>1</b>
<b>CERTIFICATES, FORM OF BID &amp; AGREEMENT</b>	
• GENERAL CONDITIONS	<b>3</b>
• BID SCHEDULE	<b>7</b>
• NOTICE OF AWARD	<b>11</b>
• ACCEPTANCE OF NOTICE	<b>12</b>
• PAYMENT BOND	<b>13</b>
• PERFORMANCE BOND	<b>16</b>
• NOTICE TO PROCEED	<b>19</b>
• AGREEMENT	<b>20</b>
• CONTRACT CHANGE ORDER	<b>23</b>
• APPLICATION FOR PAYMENT	<b>24</b>
• SECTION 01500- SPECIAL CONDITIONS	<b>25</b>
• MATERIALS	<b>26</b>
• MEDIATED SETTLEMENT CONFERENCES	<b>28</b>



# INVITATION FOR BIDS

FOR

CITY OF HENDERSONVILLE  
**2021 Locust St Curb & Gutter and  
 Sidewalk**  
 HENDERSONVILLE, NORTH CAROLINA

## SCOPE OF WORK

2021 Locust St Job includes but is not limited to: mobilization, demolition of existing curb & gutter and sidewalk, installation of new curb & gutter and sidewalk as described in Bid Schedule. The contractor will also be responsible installation of curb ramps as necessary, backfilling, and seed and straw. The contractor shall be responsible for all State and local permits and Call Before You Dig matters. The contractor will provide all necessary traffic control signs, cones, etc. and provide flagmen as needed. The contractor is also responsible for notifying businesses and residences within each work zone of the construction schedule and of any changes to that schedule.

## BIDS

Bids for this work will be received by:

Tom Wooten., Public Works Director  
 City of Hendersonville  
 305 Williams Street  
 Hendersonville, NC 28792  
 Ph: 828-697-3084/ Fax: 828-697-3089

up to **9:00 AM**, on **Friday, February 19, 2021** and immediately thereafter publicly opened and read aloud in the Operations Center Small Conference room located at 305 Williams Street, Hendersonville, NC. No bids will be accepted after this time.

## PLANS, SPECIFICATIONS, AND CONTRACT DOCUMENTS

Complete specifications and contract documents may be examined at the following locations:

City of Hendersonville  
 City Operations Center  
 305 Williams Street  
 Hendersonville, NC 28793  
 (828) 697-3084

Copies of complete plans, specifications and contract documents may be obtained in person at the following location:

City of Hendersonville  
 City Operations Center  
 305 Williams Street  
 Hendersonville, NC 28793  
 (828) 697-3084

## QUESTIONS AND CLARIFICATIONS

All questions and requests for clarification of the plans and specifications must be in writing and mailed, faxed or emailed to Tom Wooten, 305 William St Hendersonville, NC 28793, fax (828) 697-3089, [twooten@hvlnc.gov](mailto:twooten@hvlnc.gov). No verbal answers will be given. Questions and clarifications will be addressed at the pre-bid meeting.

**License Requirements**

Contractors are hereby notified that they must have proper license under the NC State laws governing their respective trades and that North Carolina General Statute 87 will be observed in receiving and awarding contracts. General Contractors must have general license classification for HIGHWAY CONTRACTOR.

**SUBMISSION OF BIDS**

Bids shall be made only on the form provided herein with the bid amount properly filled in and all signatures properly executed. Bids shall be submitted in a sealed envelope with the following clearly marked on the outside.

**Bid Proposal: Attn:** Tom Wooten, Public Works  
Director

**2021 Locust St Curb & Gutter and  
Sidewalk**

*(Bid Date) (Contractor) (License  
Number)*

**An optional pre-bid conference will be held on Monday February 15, 2021 at 9:00 AM in the Operations Center small conference room located at 305 Williams Street, Hendersonville, NC.**

## GENERAL

It is understood and agreed that by submitting a bid that the Contractor has examined these contract documents, drawings and specifications and has visited the site of the Work, and has satisfied himself relative to the Work to be performed.

## MATERIALS, EQUIPMENT AND EMPLOYEES

The contractor shall, unless otherwise specified, supply and pay for all labor, transportation, materials, tools, apparatus, lights, power, fuel, sanitary facilities and incidentals necessary for the completion of his work, and shall install, maintain and remove all equipment of the construction, other utensils or things, and be responsible for the safe, proper and lawful construction, maintenance and use of same, and shall construct in the best and most workmanlike manner, a complete job and everything incidental thereto, as shown on the plans, stated in the specifications, or reasonably implied therefrom, all in accordance with the contract documents.

All materials shall be new and of quality specified, except where reclaimed material is authorized herein and approved for use. Workmanship shall at all times be of a grade accepted as the best practice of the particular trade involved, and as stipulated in written standards of recognized organizations or institutes of the respective trades except as exceeded or qualified by the specifications.

No changes shall be made in the Work except upon written approval and change order of the Designer/Owner. Change orders shall be subject to provisions in the current North Carolina Construction Manual.

Products are generally specified by ASTM or other reference standard and/or by manufacturer's name and model number or trade name. When specified only by reference standard, the Contractor may select any product meeting this standard, by any manufacturer. When several products or manufacturers are specified as being equally acceptable, the Contractor has the option of using any product and manufacturer combination listed.

However, the contractor shall be aware that the cited examples are used only to denote the quality standard of product desired and that they do not restrict bidders to a specific brand, make, manufacturer or specific name; that they are used only to set forth and convey to bidders the general style, type, character and quality of product desired; and that equivalent products will be acceptable. Substitution of materials, items or equipment of equal or equivalent design shall be submitted to the City for approval or disapproval; such approval or disapproval shall be made by the City prior to the opening of bids.

If at any time during the construction and completion of the work covered by these contract documents, the conduct of any workman of the various crafts be adjudged a nuisance to the Owner or if any workman be considered detrimental to the work, the Contractor shall order such parties removed immediately from the site.

The contractor shall designate a foreman/superintendent who shall direct the work.

## CODES, PERMITS AND INSPECTIONS

The Contractor shall obtain the required permits, if required, give all notices, and comply with all laws, ordinances, codes, rules and regulations bearing on the conduct of the work under this contract. If the Contractor observes that the drawings and specifications are at variance therewith, he shall promptly notify the Designer in writing. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, codes, rules and regulations, and without such notice to the Owner, he shall bear all cost arising therefrom.

All work under this contract shall conform to the current North Carolina Building Code and other state and national codes as are applicable

## SAFETY REQUIREMENTS

The Contractor shall be responsible for the entire site and the construction of the same and provide all the necessary protections as required by laws or ordinances governing such conditions and as required by the Owner or Designer. He shall be responsible for any damage to the Owner's property or that of others on the job, by himself, his personnel or his subcontractors, and shall make good such damages. He shall be responsible for and pay for any claims against the Owner arising from such damages.

The Contractor shall adhere to the rules, regulations and interpretations of the North Carolina Department of Labor relating to Occupational Safety and Health Standards for the Construction Industry (Title 29, Code of Federal Regulations, Part 1926 published in Volume 39, Number 122, Part 11, June 24, 1974 Federal Register), and revisions thereto as adopted by General Statutes of North Carolina 95-126 through 155.

The Contractor shall provide all necessary safety measures for the protection of all persons on the work, including the requirements of the AGC Accident Prevention Manual in Construction as amended, and shall fully comply with all state laws or regulations and North Carolina Building Code requirements to prevent accident or injury to persons on or about the location of the work. He shall clearly mark or post signs warning of hazards existing, and shall barricade excavations and similar hazards. He shall protect against damage or injury resulting from falling materials and he shall maintain all protective devices and signs throughout the progress of the work.

## EQUAL OPPORTUNITY

The non-discrimination clause contained in Section 202 (Federal) Executive Order 11246, as amended by Executive Order 11375, relative to Equal Employment Opportunity for all persons without regard to race, color, religion, sex or national origin, and the implementing rules and regulations prescribed by the Secretary of Labor, are incorporated herein.

The Contractors agree not to discriminate against any employees or applicant for employment because of physical or mental disability in regard to any position for which the employees or applicant is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified disabled individuals without discrimination based upon their physical or mental disability in all employment practices.

## INSURANCE

The Contractor shall not commence work until he has obtained all insurance required, and the Owner has approved such insurance, nor shall the Contractor allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been obtained.

The Contractor shall provide and maintain during the life of this contract Workmen's Compensation Insurance for all employees employed at the site of the project under his contract.

The Contractor shall provide and maintain during the life of this contract such Public Liability and Property Damage Insurance as shall protect him and any subcontractor performing work covered by this contract, from claims for damage for personal injury, including accidental death, as well as from claims for property damages which may arise from operations under this contract, whether such operation be by the Contractor himself or by any subcontractor, or by anyone directly or indirectly employed by either of them and the amounts of such insurance shall be as follows:

### INSURANCE PROVISIONS

- A. **Worker's Compensation:** The Contractor agrees during the pendency of any agreement with the City to carry Insurance covering all employees meeting statutory limits in compliance with the applicable state and federal laws. The coverage must include employer's liability with a limit of **\$100,000** for each accident, **\$100,000** bodily injury by disease each employee; and **\$500,000** bodily injury by disease, policy limit.
- B. **Commercial General Liability:** The Contractor agrees during the pendency of any agreement with the City to carry Commercial General Liability Insurance. Coverage shall have minimum limits of **\$1,000,000** general aggregate, products/completed operations aggregate, personal and advertising injury and each occurrence. This shall include premises and operations, broad form property damage, XCU coverage and contractual liability. The coverage shall be written on an occurrence basis.
- C. **Business Auto Liability:** The Contractor agrees during the pendency of any agreement with the City to carry Business Auto liability insurance. Coverage shall have a minimum limit of **\$1,000,000** per occurrence, combined single limit for bodily injury liability and property damage liability. This shall include owned vehicles, hired and non-owned vehicles and employee non-ownership.

The Contractor shall furnish such additional insurance as may be required by General Statutes of North Carolina, including motor vehicle insurance in amounts not less than statutory limits.

Each Certificate of Insurance shall bear the provision that the policy cannot be canceled, reduced in amount or coverage eliminated in less than fifteen {15} days after mailing written notice to the insured and/or the Owner of such alteration or cancellation, sent by registered mail.

The Contractor shall furnish the Owner with satisfactory proof of carriage of the insurance required before written approval is granted by the Owner.

### **STORAGE OF MATERIALS**

The Contractor shall assure proper storage, meeting Federal and State regulations, of all potentially toxic and/or harmful chemicals or materials, to prevent possible access to these materials.

### **INVOICES FOR PAYMENT**

Not later than the fifth day of the month, the contractor shall submit to the owner a request for payment for work done during the previous month. The request shall be in the form Application for Payment contained in these documents. The contractor shall substantiate the request with invoices of vouchers or payrolls or other evidence.

Executed contract documents, insurance certifications and, upon completion and acceptance of the work, invoices and other information requested are to be sent to:

Tom Wooten., Public Works Director  
City of Hendersonville  
305 Williams Street  
Hendersonville, NC 28792  
Ph: 828-697-3084/ Fax: 828-697-3089

It is imperative that contract documents, invoices, etc., be sent only to the above address in order to assure proper and timely delivery and handling.

### **CLEANING UP**

The Contractor shall be responsible, at the completion of each day's work, to leave the site in a clean workmanlike condition. The Contractor shall keep the site and surrounding area reasonably free from rubbish at all times and shall remove debris from the site from time to time or when directed to do so by the Owner. Before final inspection and acceptance of the project, the Contractor shall thoroughly clean the site, and completely prepare the project and site for use by the owner/public.

### **GUARANTEE**

The contractor shall unconditionally guarantee materials and workmanship against patent defects arising from faulty materials, faulty workmanship or negligence for a period of twelve (12) months following the final acceptance of the work and shall replace such defective materials or workmanship without cost to the owner.

Where items of equipment or material carry a manufacturer's warranty for any period in excess of twelve (12) months, then the manufacturer's warranty shall apply for that particular piece of equipment or material. The contractor shall replace such defective equipment or materials, without cost to the owner, within the manufacturer's warranty period.

Additionally, the owner may bring an action for latent defects caused by the negligence of the contractor, which is hidden or not readily apparent to the owner at the time of beneficial occupancy or final acceptance, whichever occurred first, in accordance with applicable law.

### **CONTRACTOR-SUBCONTRACTOR RELATIONSHIPS**

The Contractor agrees that the terms of these contract documents shall apply equally to a subcontractor as to the Contractor, and that the subcontractor is bound by those terms as an employee of the Contractor.

**BID PROPOSAL**

The undersigned hereby proposes to furnish all labor, equipment and materials required and to perform all work for the construction of improvements referred to herein as:

**2021 Locust St Curb & Gutter and Sidewalk  
HENDERSONVILLE, NORTH CAROLINA**

In strict accordance with the Contract Documents and in consideration of the amounts shown on the Bid Schedule attached hereto and totaling:

TWO HUNDRED TWENTY FIVE THOUSAND SEVEN HUNDRED FIFTY ONE  
NO /100 dollars (\$ 225,751<sup>00</sup>)

The undersigned hereby agrees that, upon written acceptance of this Bid Proposal, he will execute a Contract with the Owner and provide any bonds or guarantees and certificates of insurance required by the Contract Documents within ten (10) days of the receipt of the Notice of Award.

The undersigned agrees that, if awarded the Contract, he will commence the work within ten (10) calendar days after the date of receipt of written Notice to Proceed, and that he will complete the work within 60 calendar days thereafter.

The undersigned acknowledges receipt of the following addenda:

Respectfully submitted  
Trace and Company  
Firm Name  
1163 Mountain Rd  
Mountain Home, NC 28758  
Address  
By: [Signature]

Attest to:

Elizabeth A. McCoy  
Secretary Office Manager  
(Corporate Seal)



# **2021 Locust St Curb & Gutter and Sidewalk**

## **BID SCHEDULE**

38

New gutter elevation will match existing asphalt elevation.

New sidewalk elevation will match top back of curb.

Sidewalk and curb & gutter will be raised approximately 4".

C & G on east side of street will wrap around corners of cross streets approx. 6 to 8 feet and tie down to existing C & G as necessary.

Sidewalk will extend through drive entrances and be poured at 6".

Accessible crosswalk ramps will be installed on N side of Bearcat and Locust, on W side of N Main and Locust, and on the E side of N Main and Locust.

Suitable backfill may be stored on site and reused if approved.

Alternate bid for 30" curb and gutter installation should not be included in bid total but will be considered in awarding the project.

Alternate 30" curb and gutter shall have straight edge along existing asphalt. Small chunks of asphalt that were removed during demo to be patched with S 9.5C hot mix asphalt.

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**NOTICE OF AWARD**

To: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Project Description: **2021 Locust St Curb & Gutter and Sidewalk**

The City of Hendersonville has considered the Bid Proposal submitted by you on \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, for the above-described Project in response to its Invitation to Bid and Instructions to Bidders.

You are notified that your Bid Proposal has been accepted in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

You are required by the Instructions to Bidders to execute the Agreement and furnish the required Performance Bond, Payment Bonds and Certificates of Insurance within ten (10) calendar days from the date of this Notice to you.

If you fail to execute said Agreement and to furnish said Bonds with ten (10) days from the date of this Notice, the City will be entitled to consider all your rights arising out of the acceptance of your Bid Proposal as abandoned and as a forfeiture of your Bid Guaranty. The City will be entitled to such other rights as may be granted by law.

The City reserves the right to rescind the award of the work at any time before the execution of the Contract by all parties without incurring any liability. Therefore, if you change your position, economically or otherwise, after receiving a verbal or written notice of award and in reliance upon the Authority executing the Agreement, you agree to do so solely at your own risk and the City will not incur any liability from your change of position.

You are required to return an acknowledged copy of this Notice of Award to the City.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

City of Hendersonville

OWNER

By: \_\_\_\_\_

Title: \_\_\_\_\_

**ACCEPTANCE OF NOTICE**

Receipt of the above Notice of Award is hereby acknowledged by\_\_\_\_\_

\_\_\_\_\_

(Firm)

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_

Name

\_\_\_\_\_

Title



**PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS: that

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Address of Contractor)

a \_\_\_\_\_, hereinafter called PRINCIPAL, and (Corporation, Partnership, Individual)

\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Address of Surety)

hereinafter called SURETY, are held and firmly bound unto

City of Hendersonville

\_\_\_\_\_  
(Name of Owner)

305 Williams Street, Hendersonville, North Carolina 28792

\_\_\_\_\_  
(Address of Owner)

hereinafter called OWNER, in the penal sum of:

\_\_\_\_\_  
(words)

\_\_\_\_\_  
(numbers)

in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such that whereas, the Principal entered into a certain contract with the Owner, dated the \_\_\_\_\_ day of \_\_\_\_\_, a copy of which is hereto attached and made a part hereof for the construction of:

Locust St Curb & Gutter and Sidewalk

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, Subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the Work provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such Work, and all insurance premiums on said Work, and for all labor, performed in such Work whether by Subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the Work to be performed thereunder or the Specifications accompanying the same shall in any wise affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the Work or to the Specifications.

PROVIDED, FURTHER, that no final settlement between the OWNER and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in \_\_\_\_\_ counterparts, each one of which shall be deemed an original, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

ATTEST:

\_\_\_\_\_  
(Principal) Secretary

\_\_\_\_\_  
Principal

(SEAL)

BY: \_\_\_\_\_

\_\_\_\_\_  
Address  
\_\_\_\_\_

\_\_\_\_\_  
Witness as to Principal

\_\_\_\_\_  
(Address)  
\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary) (Surety)

(SEAL)

BY: \_\_\_\_\_

Attorney-in-Fact

\_\_\_\_\_  
Address

\_\_\_\_\_  
Witness as to Surety

\_\_\_\_\_  
(Address)

**NOTE:** Date of Bond must not be prior to date of Contract. If Contractor is Partnership, all partners should execute Bond.

**IMPORTANT:**

Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the Project is located.

**PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS: that

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Address of Contractor)

a \_\_\_\_\_, hereinafter called PRINCIPAL, and

(Corporation, Partnership, Individual)

\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Address of Surety)

hereinafter called SURETY, are held and firmly bound unto

City of Hendersonville

\_\_\_\_\_  
(Name of Owner)

305 Williams Street, Hendersonville, North Carolina 28792

\_\_\_\_\_  
(Address of Owner)

hereinafter called OWNER, in the penal sum of:

\_\_\_\_\_  
(words)

\_\_\_\_\_  
(numbers)

in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such that whereas, the Principal entered into a certain contract with the Owner, dated the \_\_\_\_ day of \_\_\_\_\_, a copy of which is hereto attached and made a part hereof for the construction of:

**Locust St Curb & Gutter and Sidewalk**

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the Owner, with or without notice to the Surety and during the one year guaranty period, and if he shall satisfy all claims and demands incurred under such Contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to Work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the Work or to the Specifications.

PROVIDED, FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in \_\_\_\_\_ counterparts, each one of which shall be deemed an original, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

ATTEST:

\_\_\_\_\_  
(Principal) Secretary

\_\_\_\_\_  
Principal

(SEAL)

BY: \_\_\_\_\_  
\_\_\_\_\_  
Address  
\_\_\_\_\_

\_\_\_\_\_  
Witness as to Principal

\_\_\_\_\_  
(Address)  
\_\_\_\_\_

ATTEST:

\_\_\_\_\_(Surety)  
Secretary

\_\_\_\_\_  
Surety

(SEAL)

BY:\_\_\_\_\_  
Attorney-in-Fact

\_\_\_\_\_  
\_\_\_\_\_  
Address

\_\_\_\_\_  
Witness as to Surety  
\_\_\_\_\_  
(Address)  
\_\_\_\_\_

NOTE: Date of Bond must not be prior to date of Contract. If Contractor is Partnership, all partners should execute Bond.

**IMPORTANT:**

Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the Project is located.



**NOTICE TO PROCEED**

To: \_\_\_\_\_ Date: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Project Description: **Locust St Curb & Gutter and Sidewalk**

You are hereby notified to commence work in accordance with the Agreement dated \_\_\_\_\_, 20\_\_\_\_ on  
or before \_\_\_\_\_, 20\_\_\_\_ and in accordance with the Agreement, the date of Substantial Completion  
is \_\_\_\_\_, and the date of readiness for final payment is \_\_\_\_\_.

You are required to return an acknowledged copy of this Notice to Proceed to the City.

City of Hendersonville

Date: \_\_\_\_\_, 20\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

\*\*\*\*\*

**Acceptance of Notice**

Receipt of the above Notice of Award is hereby acknowledged by \_\_\_\_\_  
\_\_\_\_\_

(Firm)

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_

Name

\_\_\_\_\_

Title

AGREEMENT

This Agreement made and entered into this \_\_\_\_\_day of \_\_\_\_\_2021 by and between the City of Hendersonville, party of the first part, hereinafter designated as the owner, and \_\_\_\_\_, party of the second part, hereinafter designated as the Contractor.

**WITNESSETH:** That the parties hereto, for the considerations contained herein, hereby mutually agree as follows:

ARTICLE I:

Under this Agreement and Contract, the Contractor shall construct the project entitled:

**Locust St Curb & Gutter and Sidewalk**  
HENDERSONVILLE, NORTH CAROLINA

ARTICLE II:

In consideration of the payments to be made as hereinafter provided, the Contractor agrees, at his sole cost and expense, to perform all the labor and services and to furnish all the labor and materials, plant and equipment necessary to complete and to complete in good, substantial, workmanlike and approved manner, the work named under Article I hereof, within the time hereinafter specified and in accordance with the terms, conditions and provisions of this Contract and with the instructions, orders and directions of the Owner made in accordance with this contract.

ARTICLE III:

The owner agrees to pay and the Contractor agrees to accept as full compensation for all work done, and materials furnished, and for materials, equipment, and supplies sold, and also for all costs and expenses incurred, and loss or damages sustained by reason of the action of the elements or growing out of the nature of the work, or from any unforeseen obstruction or difficulty encountered in the execution of the work and for all risks of every description connected with the work, and for all expenses incurred by, or in consequence of, the suspension or discontinuance of the work as herein specified, and for faithfully completing the work and the whole thereof as herein provided, and for maintaining the work in good condition until the final payment is made, the prices stipulated in the Bid hereto attached.

The Owner shall pay to the contractor for the performance of the contract the amounts determined for the total number of each of the units of work in the attached Bid Proposal. The final payment shall be made for the actual number of units that are incorporated in or made necessary by the work covered by the Contract.

ARTICLE IV:

The following documents shall constitute integral parts of the Agreement, the whole to be collectively known and referred to as the Contract Documents, or Contract: Bid; Agreement; general Conditions; Summary of Work and all interpretations of or addenda to the Contract Documents issued by the Owner, or his representative.

The Table of Contents, Headings and Titles contained herein and in said documents are solely to facilitate reference to various provisions of the Contract Documents and in no way affect, limit, or cast light on the interpretation of the provisions to which they refer.

ARTICLE V:

The work to be performed under this contract shall be commenced within 10 calendar days after the date of written notice by the Owner to the Contractor to proceed. The work shall be completed within 60 calendar days after the date of such notice and with such extensions of time as are provided for in the contract.

It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of beginning, rate of progress and the time for completion of the work to be done hereunder as ESSENTIAL CONDITIONS of this Contract. The Contractor agrees that said work shall be executed regularly, diligently, and uninterruptedly at such rate of progress as will insure full completion of the work described herein in a reasonable time for the completion of the same, taking into consideration the average climatic range and construction conditions prevailing in this locality.

It is further agreed that time is of the essence to each and every portion of this contract and to the specifications wherein a definite portion and-certain length of time is fixed for the performance of any act whatsoever; and where under the Contract, any additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be the essence of this contract.

ARTICLE VI:

If the Contractor shall fail to comply with any of the terms, conditions, provisions or stipulations of this contract, according to the true intent and meaning thereof, then the owner may make use of all remedies provided in that behalf in the contract and shall have the right and power to proceed in accordance with the provisions thereof.

The following alterations and addenda have been made and included in this Contract before it was signed by the parties hereto:

IN WITNESS WHEREOF, the parties of this Agreement have hereunto set their hands and seals and have executed this Agreement, the day and year first above written.

This instrument has been pre-audited in the manner required by the local government fiscal control act.

\_\_\_\_\_  
Finance Director

**CITY OF HENDERSONVILLE  
OWNER**

(Seal)

Attest: \_\_\_\_\_

BY: \_\_\_\_\_

Title: Public Works Director

(Seal)

By: \_\_\_\_\_

Title: \_\_\_\_\_

Contractor

## **ATTACH INSURANCE CERTIFICATES**

CONTRACT CHANGE ORDER

Project: **Locust St Curb & Gutter and Sidewalk**  
HENDERSONVILLE, NORTH CAROLINA

Owner: CITY OF HENDERSONVILLE  
145 5th Ave East  
Hendersonville, N.C. 28793

To:

Per the North Carolina State Construction Manual the contract is changed as follows:

The original **Contract Sum** was \$ \_\_\_\_\_  
The net change by previously authorized Change Orders \$ \_\_\_\_\_  
The **Contract Sum** prior to this Change Order was \$ \_\_\_\_\_  
The **Contract Sum** will be increased by this Change Order in the amount of \$ \_\_\_\_\_ The new  
**Contract Sum** including this Change Order will be \$ \_\_\_\_\_  
The Contract Time will be increased by ( ) Days  
The date of Substantial Completion as of the date of this Change Order therefore is \_\_\_\_\_ -

Purpose of WORK CHANGE ORDER DIRECTIVE:

Attachments:

Approved By Owner:

BY: \_\_\_\_\_  
TITLE: Director, Public Works  
DATE: \_\_\_\_\_

Receipt Acknowledged By Contractor:

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
DATE: \_\_\_\_\_

**APPLICATION FOR PAYMENT**

APPLICATION #

Date:

Project: **Locust St Curb & Gutter and Sidewalk**  
 HENDERSONVILLE, NORTH CAROLINA

**ENGINEER:** City of Hendersonville, Hendersonville, North Carolina

**CONTRACTOR:**

<b>SUMMARY:</b>	TOTAL WORK COMPLETED TO DATE	\$
	TOTAL MATERIALS STORED ON SITE	\$
	TOTAL EARNED THIS APPLICATION	\$
	LESS PREVIOUS PAYMENTS	\$
	CURRENT PAYMENT DUE	\$

**APPLICATION:**

CONTRACTOR:

_____	_____	_____
Name	Title	Date

**VERIFICATION:**

CONSTRUCTION INSPECTOR: City of Hendersonville

IN ACCORDANCE WITH THE CONTRACT AND THIS APPLICATION FOR PAYMENT, THE CONTRACTOR HAS COMPLETED THE WORK STATED ABOVE AND IS ENTITLED THE FULL PAYMENT IN THE AMOUNT SHOWN.

_____	_____	_____
Name	Title	Date

**APPROVAL:**

OWNER: City of Hendersonville  
 THIS APPLICATION IS HEREBY APPROVED FOR PAYMENT:

_____	<u>Director of Public Works,</u>	_____
Name	Title	Date



## SECTION 01500 - SPECIAL CONDITIONS

### 01500.1 LIMITS OF CONSTRUCTION

The Contractor shall confine all operations and personnel to the limits of construction as designated by the City. There shall be no disturbance whatsoever of any areas outside the limits of construction.

### 01500.2 CLEANLINESS

The Contractor shall maintain the work and project grounds free from rubbish, debris and waste materials during all phases of the work.

Immediately upon completion of the work but prior to final acceptance, the Contractor shall remove all rubbish, debris, temporary structures, equipment, excess or waste materials and shall leave the work and project grounds in a neat and orderly condition that is satisfactory to the Owner.

### 01500.5 EQUIPMENT AND MATERIAL STORAGE

The Contractor shall plan his activities so that all materials and equipment can be stored within the limits of construction or in areas provided by the Owner.

### 01500.6 CONTROL OF EROSION, SILTATION AND POLLUTION

- A. The Contractor shall take whatever measures necessary to minimize soil erosion and siltation, water and air pollution caused by his operations. The Contractor shall also comply with the applicable regulations of all legally constituted authorities relating to pollution prevention and control.

The Contractor shall keep himself fully informed of all such regulations which in any way affect the conduct of the work, and shall at all times observe and comply with all such regulations. In the event of conflict between such regulations and the requirements of the specifications, the more restrictive requirements shall apply.

- B. The Contractor shall control dust throughout the life of the project within the project area and at all other areas affected by the construction of the project, including, but not specifically limited to, access roads, disposal sites, borrow and material pits, and production sites. Dust control shall not be considered effective where the amount of dust creates a potential or actual unsafe condition, public nuisance, or condition endangering the value, utility, or appearance of any property.

### 01500.7 TRAFFIC CONTROL

The Contractor shall provide, erect, and maintain all necessary devices to control traffic and protect the public, the work and workers. All traffic control shall be provided as established in The Manual of Uniform Traffic Control Devices and any and all supplements of the North Carolina Department of Transportation.

In special cases, additional traffic control may be required as directed by the Owner or by the North Carolina Department of Transportation, and a Change Order will be issued.

MATERIALS

Satisfactory soil materials are defined as those complying with American Association of State Highway and Transportation Officials M145, soil classification Groups A-1, A-2-4, A-2-5, and A-3.

Unsatisfactory soil materials are those defined in AASHTO M145, soil classification Groups A-2-6, A-2-7, A-4, A-5, A-6, and A-7: also peat and other highly organic soils.

ABC Stone: Aggregate Base Course "Crusher Run" shall be an NCDOT approved material from an approved quarry unless otherwise specified by the City of Hendersonville.

ASPHALT MATERIALS

Asphalt Surface Treatment: Asphalt surface treatment shall be in accordance with Type RS 9.5C. Asphalt shall be a NCDOT approved mix and shall be installed to conform to the standard requirements of NCDOT.

CONCRETE MATERIALS

Sidewalks: Sidewalks shall be constructed using the "Standard Specifications and Details for Construction" set forth by the City of Hendersonville and shall be constructed using 4000 psi concrete.

Curb and Gutter: Curb and gutter that has been removed shall be reinstalled to the same dimensions as the existing curb and gutter that surrounds it. Curb and gutter shall be constructed of 4000 psi concrete and shall be constructed using the "Standard Specifications and Details for Construction" set forth by the City of Hendersonville.

Valley Gutter: Valley gutter shall be installed in accordance with the "Standard Specifications and Details for Construction" set forth by the City of Hendersonville. Valley gutter may be used as drive entrances as specified by the City and shall be constructed using 4000 psi concrete.

Drive Aprons: Aprons shall be installed using 4000 psi and in accordance with the Standard Specifications and Details for Construction" set forth by the City of Hendersonville.

Crosswalk Aprons: Aprons shall be installed using 4000 psi and in accordance with the Standard Specifications and Details for Construction" set forth by the City of Hendersonville.

ADA Detectable Warning Plates: Shall be constructed of cast iron and shall be installed in accordance with the Standard Specifications and Details for Construction" set forth by the City of Hendersonville.

FINE GRADING

Grading : Finished Grading - Lawn Areas: After the finish-grade has been prepared, available on-site topsoil shall be spread in a uniform manner over areas that require it. Topsoil that is in a frozen or muddy condition shall not be used. If suitable topsoil is not available on-site, the Contractor is responsible for supplying topsoil if it is determined that the existing soil conditions are unsuitable for establishing an acceptable lawn. Reseeding shall be complete using a fescue type seed or blend with straw mulch.



Resolution # R-21-03

**RESOLUTION ADOPTING THE RULES IMPLEMENTING MEDIATED  
SETTLEMENT CONFERENCES IN  
CITY OF HENDERSONVILLE CONSTRUCTION PROJECTS**

**WHEREAS**, N.C. Gen. Stat. § 143-128(f1) requires that for any building construction project in the formal bidding range the City have in place a dispute resolution procedure involving mediation for disputes of at least \$15,000.00; and

**WHEREAS**, City Council wishes to adopt such a policy; and

**WHEREAS**, a proposed policy entitled “RULES IMPLEMENTING MEDIATED SETTLEMENT CONFERENCES IN CITY OF HENDERSONVILLE CONSTRUCTION PROJECTS” has been presented to the City Council for consideration; and

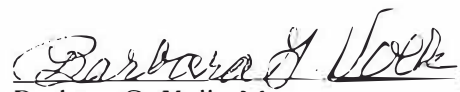
**WHEREAS**, as written, the proposed policy, applies to any City contract which, by its terms, makes it applicable;

**NOW THEREFORE, BE IT RESOLVED** by the City Council of the City of Hendersonville, North Carolina that resolves that the policy entitled “RULES IMPLEMENTING MEDIATED SETTLEMENT CONFERENCES IN CITY OF HENDERSONVILLE CONSTRUCTION PROJECTS” is adopted as presented.

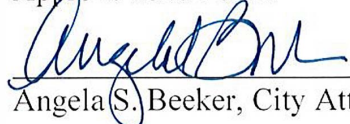
Adopted the City Council of the City of Hendersonville, North Carolina this 7<sup>th</sup> day of January 2021.

ATTEST:

  
Angela L. Reece, City Clerk

  
Barbara G. Volk, Mayor

Approve as to Form:

  
Angela S. Beeker, City Attorney

RULES IMPLEMENTING MEDIATED SETTLEMENT CONFERENCES IN  
CITY OF HENDERSONVILLE CONSTRUCTION PROJECTS

Section 5, Item D.

Adopted: January 7, 2021

RULE 1. INITIATING MEDIATED SETTLEMENT CONFERENCES

- A. Purpose of Mandatory Settlement Conferences. These Rules are promulgated to implement a system of settlement events which are designated to focus the parties' attention on settlement rather than on claim preparation and to provide a structured opportunity for settlement negotiations to take place. Nothing herein is intended to limit or prevent the parties from engaging in settlement procedures voluntarily at any time prior to or during commencement of the dispute resolution process.
- B. Applicability/Initiating the Dispute Resolution Process
1. Applicability. These Rules Implementing Mediated Settlement Conferences in City of Hendersonville Construction Projects ("Rules") shall apply to any party to a contract related to a City of Hendersonville construction project involving the erection, construction, alteration or repair of a building as required by N.C.G.S. § 143-128(g). These Rules shall also apply to any party to a contract, involving any other City construction project, which by its terms incorporates these Rules. As used herein "party to a contract" shall include, but not be limited to, contractors, subcontractors, and design professionals and their subcontractors.
  2. Initiating the Dispute Resolution Process. Any party to a contract who is a party to a dispute arising out of the construction process in which the amount in controversy is at least \$15,000 may submit a written request to the City Representative for mediation of the dispute. As used herein, the "City Representative" shall refer to the person(s) designated as the City Representative for the purposes of these Rules, or if no one is so designated, "City Representative" shall refer to the person(s) designated as project manager, project liaison, or notice agent(s) for the City in the contract between the City and prime contractor or Project Designer. Disputes of less than \$15,000 are not subject to these Rules.

Prior to submission of a written request for mediation to the City Representative, the party(ies) requesting mediation,

- a. If a prime contractor, must have first submitted its claim to the Project Designer (Architect, Engineer or other as designated by the City) for review. If the dispute is not resolved through the Project Designer's instructions, then the dispute becomes eligible for mediation in this dispute resolution process, and the party may submit their written request for mediation to the City Representative.
- b. If the party requesting mediation is the Project Designer, then it must first submit its claim to the City Representative to resolve. If the dispute is not resolved with the City Representative's involvement, then the Project Designer's dispute is eligible for mediation in this dispute resolution process, and the Project Designer may submit its written request to the City Representative for mediation.
- c. If the party requesting mediation is a subcontractor, it must first have submitted its claim for mediation to the prime contractor or design professional with whom it has a contract. If the

dispute is not resolved through the prime contractor's or design professional's then the dispute becomes eligible for mediation in this dispute resolution process, and the party may submit its written request for mediation to the City Representative.

3. If a matter or issue arises in the dispute resolution process that is not addressed by these Rules, the rules of procedure governing the Superior Court Mediation Program shall be used as a guide.

## RULE 2. SELECTION OF MEDIATOR

- A. Selection of Certified Mediator by Agreement of the Parties. The parties may select a certified mediator pursuant to these Rules by agreement within 21 days of requesting mediation. The requesting party shall file with the City Representative a Notice of Selection of Mediator by Agreement within 10 days of the request; however, any party may file the notice. Such notice shall state the name, address and telephone number of the mediator selected; state the rate of compensation of the mediator; state that the mediator and the other parties have agreed upon the selection and rate of compensation; and state that the mediator is certified pursuant to these Rules.
- B. Nomination and City Representative Approval of a Non-Certified Mediator. The parties may select a mediator who does not meet the certification requirements of these Rules but who, in the opinion of the parties and the City Representative is otherwise qualified by training or experience to mediate the action.

If the parties select a non-certified mediator, the requesting party shall file with the City Representative a Nomination of Non-Certified Mediator within 10 days of the request. Such nomination shall state the name, address and telephone number of the mediator; state the training, experience or other qualifications of the mediator; state the rate of compensation of the mediator; and state that the mediator and opposing counsel have agreed upon the selection and rate of compensation.

The City Representative shall rule on said nomination, shall approve or disapprove of the parties' nomination and shall notify the parties of its decision.

- C. Appointment of Mediator by the City Representative. If the parties cannot agree upon the selection of a mediator, either the party or party's attorney shall notify the City Representative and request, on behalf of the parties, that the City Representative appoint a mediator. The request for appointment must be filed within 10 days after request to mediate and shall state that the parties have had a full and frank discussion concerning the selection of a mediator and have been unable to agree. The request shall state whether any party prefers a certified attorney mediator, and if so, the City Representative shall appoint a certified attorney mediator. If no preference is expressed, the City Representative may appoint a certified attorney mediator or a certified non-attorney mediator.
- D. Mediator Information Directory. To assist the parties in the selection of a mediator by agreement, the parties are free to utilize the list of certified mediators maintained by Henderson County for the Superior Court Mediation Settlement Conference Program.
- E. Disqualification of Mediator. Any party may request replacement of the mediator by the City Representative for good cause. Nothing in this provision shall preclude mediators from disqualifying themselves.

## RULE 3. THE MEDIATED SETTLEMENT CONFERENCE

- A. Where Conference is to be Held. Unless all parties and the mediator otherwise agree, the settlement conference shall be held in the City of Hendersonville. The mediator shall be responsible for reserving a place and making arrangements for the conference and for giving timely notice of the time and location of the conference to all attorneys, unrepresented parties and other persons and entities required to attend.
- B. When Conference is to be Held. The deadline for completion of the mediation shall be not less than 30 days nor more than 60 days after the naming of the mediator.
- C. Request to Extend Deadline for Completion. A party, or the mediator, may request that the City Representative extend the deadline for completion of the conference. Such request shall state the reasons the extension is sought and shall be served by the moving party upon the other parties and the mediator. If any party does not consent to the request, said party shall promptly communicate its objection to the City Representative.
- The City Representative may grant the request by setting a new deadline for completion of the conference or deny the request to extend the deadline.
- D. Recesses. The mediator may recess the conference at any time and may set times for reconvening. If the time for reconvening is set before the conference is recessed, no further notification is required for persons present at the conference.
- E. **The mediated settlement or the matter subject of the mediation conference shall not be cause for the delay of the construction project which is the focus of the dispute.**

#### RULE 4. DUTIES OF PARTIES AND OTHER PARTICIPANTS IN THE DISPUTE RESOLUTION PROCESS

- A. Attendance.
1. All parties to the dispute originally presented to the Designer or Prime Contractor or County for initial resolution must attend the mediation. Failure of a party to attend the mediation may result in the City's withholding of monthly payment to that party until such party attends the mediation, or if the party is a subcontractor the withholding of the subcontractor's payment by the contractor or design professional if the subcontractor's contract so provides.
  2. Attendance shall constitute physical attendance, not by telephone or other electronic means. Any attendee on behalf of a party must have authority from that party to bind it to any agreement reached as a result of the mediation.
  3. Attorneys on behalf of parties may attend the mediation but are not required to do so.
  4. Sureties or insurance company representatives are not required to attend the mediation unless any monies paid or to be paid as a result of any agreement reached as a result of mediation require their presence or acquiescence. If such agreement or presence is required, then authorized representatives of the surety or insurance company must attend the mediation.
- B. Finalizing Agreement. If an agreement is reached in the conference, parties to the agreement shall reduce the terms to writing and sign it along with their counsel, if counsel is present.

- C. Mediation Fee. The mediation fee shall be divided equally among the parties to the dispute, unless otherwise agreed to as part of the mediation. If the City is a party to the dispute, the City shall pay its equal share of the mediator’s fee based on the number of parties to the dispute, or 1/3 of the mediator’s fee, whichever is greater as required by N.C.G.S. § 143-128(f1) in which case the remaining parties shall equally divide the remaining 2/3 of the mediator’s fee.
- D. Failure to compensate mediator. Any party’s failure to compensate the mediators in accordance with these Rules shall subject that party to a withholding of said amount of money from the party’s monthly payment by the City of Hendersonville, or if the party is a subcontractor the withholding of the subcontractor’s payment by the contractor or design professional if the subcontractor’s contract so provides.

RULE 5. AUTHORITY AND DUTIES OF MEDIATOR

- A. Authority of Mediator.
1. Control of Conference. The mediator shall at all times be in control of the conference and the procedures to be followed.
  2. Private Consultation. The mediator may communicate privately with any participant or counsel prior to and during the conference. The fact that private communications have occurred with a participant shall be disclosed to all other participants at the beginning of the conference.
  3. Scheduling the Conference. The mediator shall make a good faith effort to schedule the conference at a time that is convenient with the participants, attorneys and mediator. In the absence of agreement, the mediator shall select the date for the conference.
- B. Duties of Mediator
1. The mediator shall define and describe the following at the beginning of the conference:
    - a. The process of mediation;
    - b. The difference between mediation and other forms of conflict resolution;
    - c. The costs of the mediated settlement conference;
    - d. That the mediated settlement conference is not a trial, the mediator is not a judge, and the parties retain their legal rights if they do not reach settlement;
    - e. The circumstances under which the mediator may meet and communicate privately with any of the parties or with any other person;
    - f. Whether and under what conditions communications with the mediator will be held in confidence during the conference;
    - g. The inadmissibility of conduct and statements as provided by N.C.G.S. 7A-38.1(1);
    - h. The duties and responsibilities of the mediator and the participants; and
    - i. That any agreement reached will be reached by mutual consent.
  2. Disclosure. The mediator has a duty to be impartial and to advise all participants of any circumstance bearing on possible bias, prejudice or partiality.
  3. Declaring Impasse. It is the duty of the mediator to timely determine that an impasse exists and



that the conference should end.

- 4. Reporting Results of Conference. The mediator shall report to the City Representative within 10 days of the conference whether or not an agreement was reached by the parties. If an agreement was reached, the report shall state the nature of said agreement. The mediator's report shall inform the City Representative of the absence of any party known to the mediator to have been absent from the mediated settlement conference without permission. The City Representative may require the mediator to provide statistical data for evaluation of the mediated settlement conference program.
- 5. Scheduling and Holding the Conference. It is the duty of the mediator to schedule the conference and conduct it prior to the deadline of completion set by these Rules. Deadlines for completion of the conference shall be strictly observed by the mediator unless said time limit is changed by a written order from the City Representative.

RULE 6. COMPENSATION OF THE MEDIATOR

- A. By Agreement. When the mediator is stipulated by the parties, compensation shall be as agreed upon between the parties and the mediator provided that the provision of N.C.G.S. 143-128(f1) are observed.
- B. By Appointment. When the mediator is appointed by the City Representative, the parties shall compensate the mediator for mediation services at the rate in accordance with the rate charged for Superior Court mediation. The parties shall also pay to the mediator a one-time per case administrative rate in accordance with the rate charged for Superior Court mediation, which is due upon appointment.

RULE 7. MEDIATOR CERTIFICATION.

All certified mediators shall be properly certified in accordance with the rules certifying mediators in Superior Court in North Carolina. (Except when otherwise allowed by the City Representative upon the request of the parties to the mediation.) When selecting mediators, the parties may designate a preference for mediators with a background in construction law or public construction contracting. Such requirements, while preferred, are not mandatory under these Rules.

All mediators chosen must demonstrate either they are certified in accordance with these Rules Implementing Scheduled Mediated Settlement Conference in Superior Court or must gain the consent of the City Representative to mediate any dispute in accordance with these Rules.

RULE 8. RULE AMENDMENTS.

These Rules are subject to amendment by the City of Hendersonville City Council at any time the City deems it appropriate. Further, these Rules may be modified or waived for a particular project by the City Manager, provided that the City contract(s) related to the project reflect such modification or waiver.

RULE 9. TIME LIMITS.

Any time limit provided for by these Rules may be waived or extended by the mediator for good cause shown. If a mediator has not yet been appointed, if the mediator has disqualified him/herself, or if the City Representative is in the process of replacing the mediator as allowed by these Rules, the City Representative shall decide all waivers or extensions of time for good cause shown.

Bid Summary

2/19/21

2021 Locust St Curb & Gutter and Sidewalk  
City of Hendersonville

Company	Bid Amount
Brightview Landscape Per	\$292,407. <sup>10</sup>
Trace and Company	\$225,751. <sup>00</sup>
Moore and Son's	Did not bid
Rock Creek Grading	\$278,133. <sup>36</sup>

For the City Tom Whorter

Chad Freeman



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

<b>SUBMITTER:</b>	Tyler Morrow	<b>MEETING DATE:</b> March 4 <sup>th</sup> , 2021
<b>AGENDA SECTION:</b>	Council Action	<b>DEPARTMENT:</b> Community Development - Planning Division
<b>TITLE OF ITEM, Presenter Name, Title:</b>	Street Closure: 911 Tebeau Dr. Resolution of Intent (P21-13-SC) – <i>Tyler Morrow, Planner II</i>	
<b><u>SUGGESTED MOTION(S):</u></b>	I move that City Council adopt the Resolution Of Intent To Close An Unopened, Unimproved Portion Of Tebeau Drive	

### SUMMARY:

The City has received an application from the David White of Western Carolina Community Action to close unopened and unimproved portion of Tebeau Drive located on Tract 2 of that property described in Deed Book 3607 at Page 622 of the Henderson County Registry, having a PIN 9569-40-9564. A preliminary survey is included.

General Statue 160A-299 outline procedures and provides the City with authority for permanently closing streets and alleys. Whenever there is a proposal to permanently close any street or public alley, the City Council shall first adopt a resolution declaring its intent to close the street or alley and shall set a date for a public hearing. At this public hearing, any person may be heard on the question of whether the closing would be detrimental to the public interest or the property rights of any individual.

The public hearing shall be set for April 1<sup>st</sup>, 2021 at 5:45 p.m. or as soon thereafter as City Council may hear it.

**BUDGET IMPACT:**     \$0

**Is this expenditure approved in the current fiscal year budget?** NO

**If no, describe how it will be funded.**

N/A

**PROJECT NUMBER:** N/A

**PETITION NUMBER:** P21-13-SC

**ADDITIONAL PETITION NUMBER:** N/A

**PETITIONER NAME:** David White of Western Carolina Community Action

**ATTACHMENTS:** Resolution of Intent, Application, Preliminary Road Closing Survey, and Deed

Resolution #\_\_-\_\_

**RESOLUTION OF INTENT TO CLOSE AN UNOPENED,  
UNIMPROVED PORTION OF TEBEAU DRIVE**

**WHEREAS**, NC General Statute (G.S.) 160A-299 authorizes the City Council to close public streets and alleys; and

**WHEREAS**, David White, Chief Executive Officer of Western Carolina Community Action has petitioned the City of Hendersonville City Council to close an unopened and unimproved unnamed portion of the street known as Tebeau Drive, located on Tract 2 of the property described in that deed recorded in the Henderson County Registry in Deed Book 3607 at page 622, having a PIN of 9569-40-9564; and

**WHEREAS**, NC General Statute 160A-299 requires that City Council conduct a public hearing for the purpose of giving consideration to the petition; and

**WHEREAS**, At the public hearing, any person may be heard on the question of whether or not the closing would be detrimental to the public interest, or the property rights of any individual; and

**NOW THEREFORE, BE IT RESOLVED** by the City Council of the City of Hendersonville, North Carolina that:

1. City Council herewith calls a public hearing to be held at 5:45 p.m. (or as soon thereafter as it may be heard) on the 1<sup>st</sup> day of April 2021, in the Council Chambers of City Hall to consider closing an unopened and unimproved unnamed portion of the street known as Tebeau Drive, located on Tract 2 of the property described in that deed recorded in the Henderson County Registry in Deed Book 3607 at page 622, having a PIN of 9569-40-9564. Persons shall be allowed to attend and comment in person or via Zoom at the following address:

<https://zoom.us/j/95746846396?pwd=YmlXdXdHcjRFVIM2VElqcEVwT1ZLZz09#success>

Dial-in by phone: (646) 558-8656

Meeting ID: 957 4684 6396

Passcode: 28792

Written comments may be submitted prior to the public hearing on the City's webpage at [www.hendersonvillenc.gov/public-comment](http://www.hendersonvillenc.gov/public-comment) or directly to the City Clerk, Angela Reece, [areece@hvlnc.gov](mailto:areece@hvlnc.gov), 160 6<sup>th</sup> Avenue East, Hendersonville, NC 28792.

2. The legal description for the portion of Tebeau Drive proposed for closing is as follows:

Beginning on a ½" Iron pipe, said iron pipe being located S 83°46'01"E 134.58 feet from an Existing Iron Stake having State Plane Coordinates of N = 590444.065, and E = 964834.239, said iron pipe also being the southwestern corner of Tract 2 of the property described in that deed recorded in the Henderson County Registry

in Deed Book 3607 at page 622, having a PIN of 9569-40-9564, and running thence from said beginning point N 16°38'43" E 17.34' to a point, thence on a curve to the right, said curve having a radius of 199.08' and an arc length of 95.94' (chord bearing N 36°49'42" E and chord distance 95.01') to a point, thence on a curve to the left, said curve having a radius of 220.5' and an arc length of 54.48' (chord bearing N 46°08'13" E and chord distance 54.34') to a point, thence on a curve to the left, said curve having a radius of 157.83' and an arc length of 52.10' (chord bearing N 29°48'38" E and chord distance of 51.86') to a point, thence on a curve to the left, said curve having a radius of 225.21' and an arc length of 37.20' (chord bearing N 17°36'58" E and chord distance of 37.16') to a point, thence S 04°48'49" E a distance of 105.31' to a point, thence on a curve to the right, said curve having a radius of 155.31' and an arc length of 62.09' (chord bearing S 43°43'12" W and chord distance of 61.68') to a point, thence on a curve to the left, said curve having a radius of 159.08' and an arc length of 30.70' (chord bearing S 44°48'41" W and chord distance of 30.66') to a point, thence on a curve to the left, said curve having a radius of 159.08' and an arc length of 43.04' (chord bearing S 31°31'54" W and chord distance of 42.91') to a point, thence S 16°38'43" W 7.63' to a point, thence N 83°46'01" E 40.67' to the point and place of beginning. Containing 0.17 Acre and being a portion of the right of way of Tebeau Drive running between Lots 1 and of Rosemont subdivision to the west, and Lots 17 and 18 of Rosemont subdivision to the East, as shown on Plat Cabinet B, Slide 103 of the Henderson County Registry.

The above-described portion of Tebeau Drive to be closed will also be shown on a plat to be recorded in the Henderson County Registry if approved by City Council.

- 3. The City Clerk is hereby directed to publish this Resolution of Intent once a week for four successive weeks.
- 4. The City Clerk is further directed to transmit by registered or certified mail to each owner of property abutting upon that portion of said street a copy of the Resolution of Intent.
- 5. The City Clerk is further directed to cause adequate notices of the Resolution of Intent and the scheduled public hearing to be prominently posted in at least two along the portion of Brown Street proposed for closure as required by G.S. 160A-299.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 4<sup>th</sup> day of March 2021.

Attest:

\_\_\_\_\_  
Barbara G. Volk, Mayor, City of Hendersonville

\_\_\_\_\_  
Angela L. Reece, City Clerk

Approved as to form:  
\_\_\_\_\_

Angela S. Beeker, City Attorney



**CITY OF HENDERSONVILLE**  
**DEVELOPMENT ASSISTANCE DEPARTMENT**  
 100 N. King Street ~ Hendersonville, NC ~ 28792  
 Phone (828) 697-3010 ~ Fax (828) 697-6185  
 www.cityofhendersonville.org

**PETITION TO PERMANENTLY CLOSE A STREET / ALLEY**

The following are required to constitute a complete application for closing a street or alley:

- ~ This form including the signature(s) of property owner(s) adjoining the street or alley.
- ~ Appropriate fee.
- ~ A copy of the deed indicating ownership of the property.
- ~ A survey plat (8 1/2 " by 11") of the property prepared by a registered surveyor licensed to practice in the state of North Carolina.
- ~ A typed boundary description of the area to be closed, in digital format if possible.

Date 2/12/2021 Name of street/alley "unnamed" 911 Tebeau Dr.  
Hendersonville NC

List 10 digit PIN or 7 digit PID number 9569-40-9564, 9569-40-8333

Are you proposing to close a street or alley?

☒ STREET

☐ ALLEY

Are you closing all or a portion of the street/alley?

☐ ALL

☐ PORTION

Applicant Name Western Carolina Community Action

Address 220 King Creek Blvd. Hendersonville NC 28792  
DWhite@wcca.org

Phone 828 696-6674

Fax Mnelson@wcca.org

Email DWhite@wcca.org

Property Owner: Name

\*828-697-4287

Lin Carter@wcca.org  
Mnelson@wcca.org

Address

Signature

D. White CEO

Printed Name

David White  
Chief Executive Officer

Property Owner: Name

Address

Signature

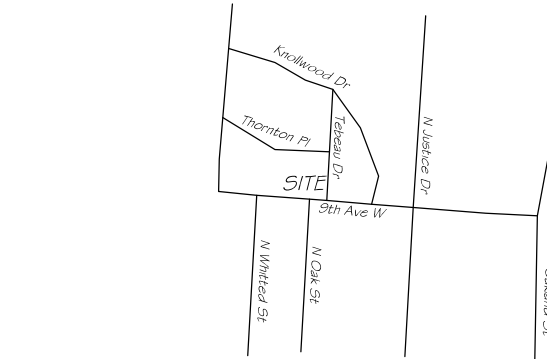
\*

Printed Name

Official Use:

DATE RECEIVED: \_\_\_\_\_ BY \_\_\_\_\_ FEE RECEIVED \$ \_\_\_\_\_





NOT TO SCALE

Vicinity Map



I, Cameron S. Baker, certify that this plat was drawn under my supervision from an actual survey under my supervision, (deed description recorded in book 3807, page 522...) that the ratio of precision as calculated by latitudes and departures does not exceed 1:10,000 and that this map was prepared in accordance with G.S. 47-30 as amended. Witness my hand and seal this      day of     , 20    .

Professional Land Surveyor No. L-4920

I, Cameron S. Baker, certify that this survey is of another category, such as the recombination of existing parcels, a court ordered survey, or other exception to the definition of subdivision such as an easement.

Professional Land Surveyor No. L-4920

Global Positioning System Certification (RTK)  
The Positional Accuracy Of The RTK Derived Positional Information is 0.03' Horizontal & 0.03' Vertical

Horizontal Positional Are Referenced to NAD 83 (NSRS 2011)

Vertical Positions Are Referenced to NAVD 88 (Geoid 12)

Combined Factor 0.99977581 (Ground To Grid)

Equipment Used: Carlson GPS-BRx6

Being all of D.B. 3607, Pg. 622

Street Closure Plat for  
**Western Carolina  
Community Action, Inc.**

-Owners-  
D.B. 3607, pg. 622

Pin: 9569-40-9564  
Pin: 9569-40-8533

Hendersonville Township Henderson County, NC

**ASSOCIATED LAND SURVEYORS**

&amp; PLANNERS P.C.

P.O. BOX 578 \* HORSE SHOE, NC 28742

(828) 890-3507 NC BUSINESS LICENSE NO. C-2774

SCALE: 1" Inch = 20 Feet

DATE: February 11, 2021

JOB NO.: S-21-064

DRAWN BY: JTB

INW/ICAD 470

Legend:  
EIP = Existing Iron Pipe  
EIS = Existing Iron Stake  
IPS = Iron Pipe Set  
O = Unmarked Point, Unless Otherwise Noted  
ROW/MON = Right of Way Monument  
ROW = Right of Way  
C/O = Clean Out  
F/H = Fire Hydrant  
G/V = Gas Valve  
P/P = Power Pole  
SSMH = Sanitary Sewer Manhole  
S/V = Sewer Valve  
W/M = Water Meter  
W/V = Water Valve  
-x-x-x- = Fence

State of North Carolina, County of Henderson  
filed for registration on the      day of     , 20      
at      o'clock      M and recorded in  
slide      in the office of the  
Register of Deeds of Henderson County.  
  
Register of Deeds  
By:                                 , Deputy.

State of North Carolina  
County of Henderson  
I,                                  Review Officer of Henderson County,  
certify that the map or plat to which this certification is affixed  
meets all statutory requirements for recording.

Review Officer                                  Date                                 

40' Right of Way  
As Per P.Cab. C, Slide 130A

1/4" EIS  
Flush W/ Ground**Thorton Place**

Asphalt, Public

S 88°28'18"E 136.61'

1/2" EIP (Bent)  
0.6' Above Ground  
N= 550701.586  
E= 964990.943

40' Right of Way  
As Per P.Cab. B, Slide 103  
Ward  
D.B. 1273, Pg. 226

S 83°36'58"E 120.00'

0.46 Acre  
Approx. 19983.31 Sq. Ft.

One Story Building

Ramp

Gravel

**1.00 Acre**

Pin: 9569-40-8533

Jugs  
D.B. 1511, Pg. 581

Curve	Radius	Length	Chord	Chord Bear.
C1	199.08'	95.94'	95.01'	N 36°49'42" E
C2	220.50'	54.48'	54.34'	N 46°08'13" E
C3	157.83'	52.10'	51.86'	N 29°48'38" E
C4	225.21'	37.20'	37.16'	N 17°36'58" E
C5	155.31'	62.09'	61.68'	S 43°43'12" W
C6	159.08'	30.70'	30.66'	S 44°48'41" W
C7	159.08'	43.04'	42.91'	S 31°31'54" W

Course	Bearing	Distance
L1	N 83°46'01" W	119.99'
L2	N 83°46'01" W	134.58'
L3	S 04°48'49" W	272.78'
L4	N 16°38'43" E	17.34'
L5	S 16°38'43" W	7.63'

Building Setbacks as per  
The City of Hendersonville R-15 Zoning:  
Front: 30'  
Side: 10'  
Rear: 15'

## Notes:

- Property is subject to all easements, restrictions and right of ways of record.
- The locations of underground utilities are based on above-ground structures and record drawings provided to the surveyor. Locations of underground utilities/structures may vary from locations shown hereon. Additional buried utilities/structures may be encountered.
- Surveyor has made no investigation or independent search for easements of record, encumbrances, restrictive covenants, ownership title evidence, or any other facts that an accurate title search may disclose.
- The certification of survey and plat was prepared for the entity named in the title block hereon and does not extend to any other entity, unless recertified by the professional land surveyor.
- All miscellaneous survey related materials, including but not limited to, project plans, deed and ROW research, maps, field notes and data, survey reports, record title report, calculations, working drawings, estimates, and other materials acquired and/or prepared by the surveyor as instruments of service shall remain the property of the surveyor and assigns.
- This drawing is not valid unless the original signature and stamp are attached. Any reproduction or variance to this survey by electronic or any other means are not to be considered issued by the professional surveyor.
- Property is currently zoned R-15 by the City of Hendersonville.
- Property is not located in a Water Supply Watershed.
- Property is not located within 1/2 mile of a designated Farmland Preservation District.
- Property is located in Zone X, minimal flood hazard as per FR15 map panel 9569, map # 3700959600J effective date 10-2-00B.

20 0 20 40 60

GRAPHIC SCALE - FEET

30' Right of Way  
As Per P.Cab. B, Slide 222A

SSMH

W/V

W/V

**9th Ave West**

Asphalt, Public

40.67'

0.17 Acre  
Approx. 7483.51 Sq. Ft.

Gate

C1

C2

C3

C4

C5

C6

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C8

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C221

C222



*This instrument was prepared by Edward L. Harrelson, a North Carolina licensed attorney. Delinquent taxes, if any, to be paid by the closing attorney to the county tax collector upon disbursement of closing proceeds.*

## GENERAL WARRANTY DEED

APPLELAND, INC. a North Carolina corporation, hereinafter called Grantor, whose address is:  
P. O. Box 118. Flat Rock, NC 28731 and

WESTERN CAROLINA COMMUNITY ACTION, INC., a non-profit corporation,  
hereinafter called Grantee, whose address is: P. O. Box 685, Hendersonville, NC 28793

WITNESSETH:

Submitted electronically by "Romeo, Harrelson & Coiner, P.A."  
in compliance with North Carolina statutes governing recordable documents  
and the terms of the submitter agreement with the Henderson County Register of Deeds.

NOW, THEREFORE, Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable considerations to him paid by Grantee, receipt of which is hereby acknowledged, does give, grant, bargain, sell and convey unto Grantee, their heirs and assigns, in fee simple, the following described property located in Hendersonville Township, Henderson County, North Carolina:

**See the attached Exhibit A, incorporated herein by reference as if set out in full for a complete legal description.**

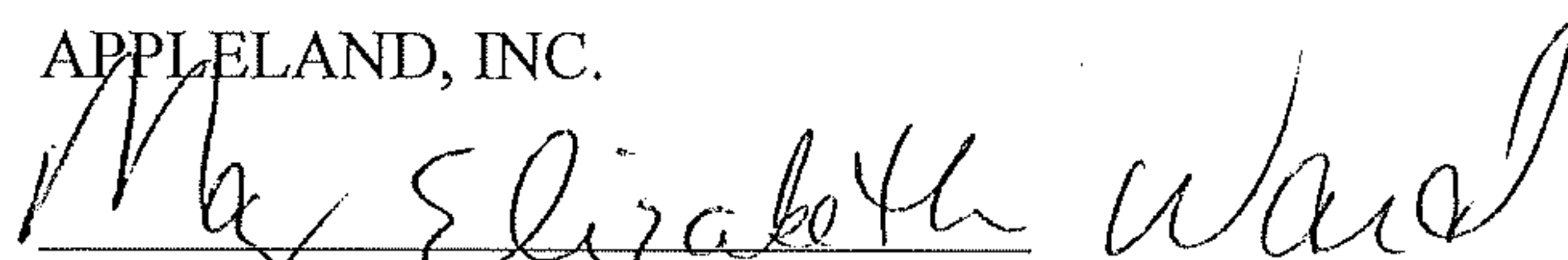
TO HAVE AND TO HOLD the above described premises, with all privileges and appurtenances thereunto appertaining unto Grantee, their heirs and/or successors and assigns, in fee simple.

Grantor covenants with Grantee that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever except for the exceptions herein stated.

Subject to restrictions, easements, rights of way of record and for *ad valorem* taxes for the current year.

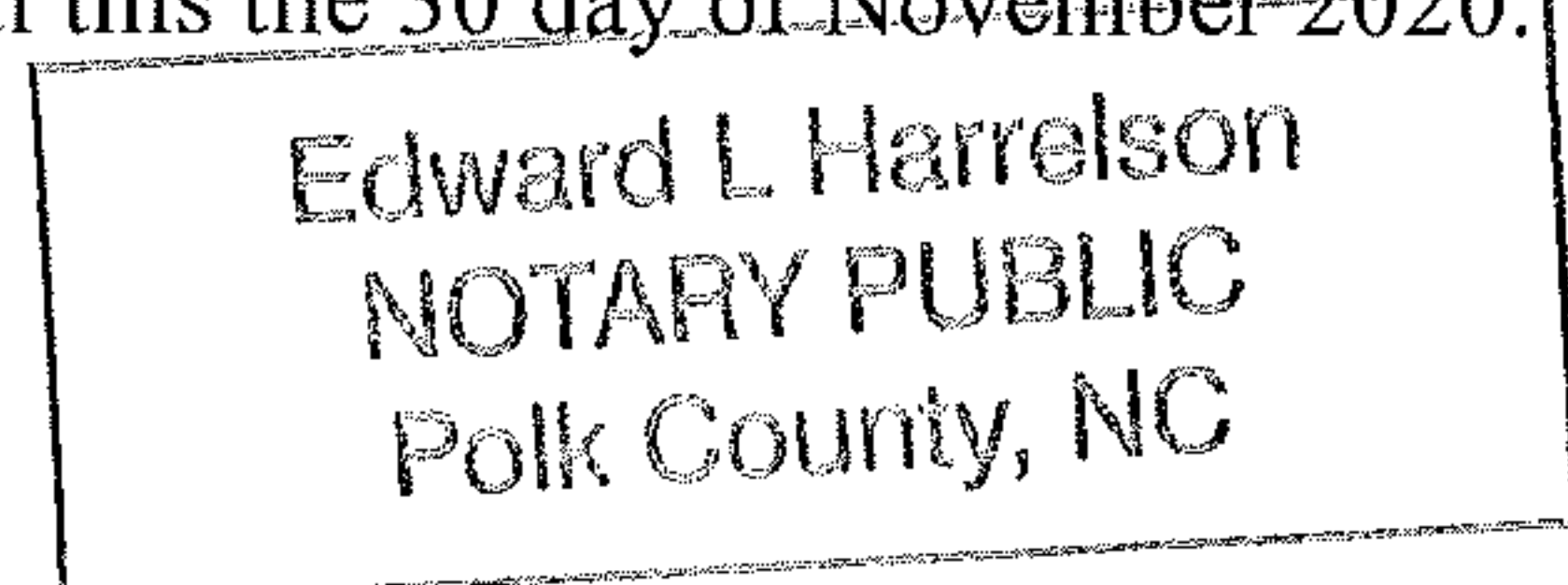
IN WITNESS WHEREOF, Grantor has hereunto set his hand and seal, the day and year first above written.


APPLELAND, INC.

  
By: VICE PRESIDENT

**STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON**

I, the undersigned Notary Public of the County and State aforesaid, certify that Mary Elizabeth Ward personally came before me this day and acknowledged that she is the Vice-President of Appleland, Inc., and that by authority duly given and as the act of such entity, she signed the foregoing instrument in its name on its behalf as its act and deed. Witness my hand and official seal this the 30 day of November 2020.



  
Notary Public

My commission expires: Jan 17, 2025.

**EXHIBIT A: PROPERTY of  
WESTERN CAROLINA COMMUNITY ACTION, INC.**

TRACT ONE:

A one-acre portion of property conveyed by J. E. Heinemann and wife to David H. Matthews by deed dated July 2, 1992 and recorded in Deed Book 801, Page 177 of the Henderson County Registry and described by metes and bounds in accordance with a plat of survey prepared by William Patterson, R.L.S. dated August 24, 1995 as follows:

BEGINNING on an iron pin marking the southeast corner of the Matthews parcel referred to above, said iron pin marking the southwest corner of property owned by Appleland, Inc. and described by deed recorded in Book 673, Page 123 of the Henderson County Registry and running then from said beginning point with the North margin of Ninth Avenue west, North 85 deg. 15 min. 56 sec. West 134.68 feet to an iron pin; then leaving the North margin of Ninth Avenue West and running a new line North 3 deg. 3 min. 28 sec. East 315.27 feet to an iron pin standing in the South margin of the 40-foot wide right of way for Thornton Place; then with said right of way South 89 deg. 53 min. 30 sec. East 137.17 feet to an iron pin; then leaving the South margin of said 40-foot wide right of way South 3 deg. 28 min. 27 sec. West 325.28 feet to an iron pin and the point of beginning.

TRACT TWO:

BEGINNING at an iron pin at the Southwest corner of Lot 5, Rosemont Subdivision according to the plat thereof recorded in Plat Cabinet B, Slide 103 (formerly Plat Book 2, Page 2), Henderson County Registry, and also being the Southwest corner of that certain parcel described as Tract 1 in that Deed to Estelle F. Strider recorded in Deed Book 442, Page 101, Henderson County Registry, all as shown on the plat of survey hereinafter referred to and running thence South 80 deg. 35 min. 24 sec. East 120 feet to an iron pin; running thence along and with Tebeau Drive South 07 deg. 50 min. 23 sec. West 273.73 feet to an iron pin at the point of intersection of the western margin of Tebeau Drive and the northern margin of Ninth Avenue West; running thence with Ninth Avenue West, North 80 deg. 35 min. 24 sec. West 120.00 feet to an iron pin; running thence North 07 deg. 50 min. 23 sec. East 273.73 feet to the point and place of beginning, containing 0.75 acres, more or less, according to the plat of survey prepared by Laughter, Austin and Associates, P.A., Job No. 86-45.



Resolution #\_\_-\_\_\_\_

Resolution Authorizing the Engagement of Parker, Poe, Adams & Bernstein, for Legal Services Related to Financing and Construction of the Parking Deck

**WHEREAS**, the City of Hendersonville is planning for the construction of a parking deck on Church Street in Hendersonville, NC; and

**WHEREAS**, the City of Hendersonville proposes to finance the construction of the parking deck through the use of Limited Obligation Bonds, as allowed under applicable laws

**WHEREAS**, City Council wishes to engage the services of outside counsel regarding the financing and construction of the parking deck;

**NOW THEREFORE, BE IT RESOLVED** by the City Council of the City of Hendersonville, North Carolina that:

- 1. The City of Hendersonville hereby selects the firm of Parker, Poe, Adams & Berstein, LLP, to provide legal services to the City for any matters related to the financing (including acting as bond counsel) and construction of the Parking Deck.
- 2. The City Attorney is authorized to execute the engagement letters for these services dated February 23, 2021 on behalf of the City of Hendersonville as presented.

Adopted by the City Council of the City of Hendersonville, North Carolina on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Attest:

\_\_\_\_\_  
Barbara G. Volk, Mayor, City of Hendersonville

\_\_\_\_\_  
Angela L. Reece, City Clerk

Approved as to form:

\_\_\_\_\_  
Angela S. Beeker, City Attorney





**Scott E. Leo**

**Partner**

t: 704.335.9858

f: 704.334.4706

scottleo@parkerpoe.com

Atlanta, GA

Charleston, SC

Charlotte, NC

Columbia, SC

Greenville, SC

Raleigh, NC

Spartanburg, SC

Washington, DC

February 23, 2021

**Via E-mail [[abeeker@hvlnc.gov](mailto:abeeker@hvlnc.gov)]**

Angela S. Beeker  
City Attorney  
City of Hendersonville, North Carolina  
160 6th Avenue East  
Hendersonville, NC 28792-4328

**Re: Request for Legal Representation**

Dear Angela:

You have requested that our firm provide the City of Hendersonville ("City") with legal representation and general legal advice regarding issues related to the construction of a parking deck. This letter will confirm our understanding regarding Parker Poe Adams & Bernstein LLP's representation.

Parker Poe will perform legal services as counsel to the City in connection with above referenced matter. The scope of the services to be provided by Parker Poe may be expanded during the course of the engagement pursuant to communications establishing a specific mutual understanding of the services to be performed.

Russell Killen will have general supervisory responsibility over the engagement and he and Mac McCarley will be the partners primarily responsible for providing services with respect to this matter. Mr. Killen and Mr. McCarley will provide services at an hourly rate of \$395/hour. Other attorneys, associates and paralegals may be asked to provide services on this matter as appropriate and will be billed at our customary client preferred rates. Those rates will be in effect through 2021 and until modified by the firm in accordance with annual rate evaluations. Such rates may be changed by the firm in the future, in which case the rates applicable at the time the work is performed will be applied. Because we are sensitive to legal costs, it is our practice to assign work to attorneys with billing rates consistent with the level of expertise and experience required to perform the work. We make every effort not to duplicate services among our attorneys and paralegals unless specifically requested by the client. We will direct our invoices to your attention. If the City requests a legal opinion related to this matter we will discuss with you at that time if an additional fixed fee is warranted for the rendering of such opinion.

The Standard Terms of Engagement attached hereto are part of this engagement letter.

We sincerely appreciate your calling on us for legal representation and look forward to working with you on this engagement. If the provisions set forth are consistent with your understanding, please sign below, keep a copy of the letter for yourself and return the original to us.

**PARKER POE ADAMS & BERNSTEIN LLP**



Scott E. Leo

SEL  
Attachment

ACCEPTED BY:

**CITY OF HENDERSONVILLE**

---

Angela S. Beeker, City Attorney

---

(Date)

**PARKER POE ADAMS & BERNSTEIN LLP****STANDARD TERMS OF ENGAGEMENT REGARDING LEGAL REPRESENTATION**

1. Scope of Work and Limitations. The scope of our work and the limitations on the services to be performed will be in accordance with the Engagement Letter.

2. No Fixed Fee/Estimates. It is usually impossible to determine at the beginning of a matter the full nature and extent of the legal services which may ultimately be necessary on the client's behalf because much of the work may depend on the responses of other parties, agencies or courts, or upon facts not yet known. Therefore, the compensation for our services will not be a fixed fee with respect to all or any part of the engagement, but rather a fee based primarily upon the time devoted to the client's matter. Our hourly rates are subject to change from time to time, without notice. Although our fees are based primarily upon time expended, we also may give consideration to the novelty and difficulty of the questions involved, the skill required to perform the task properly, the result obtained and any time constraints imposed by the client or by the circumstances. Any oral or written estimate of fees is only an estimate, based upon preliminary information available at the time of such estimate; actual fees and costs may vary from any such estimate. You agree to pay the actual fees and disbursements billed in accordance with these Standard Terms of Engagement.

3. Disbursements and Expenses. In addition to the fees described above, the client will be charged for disbursements, including, but not limited to, photocopying, deposition expenses, travel, long distance telephone calls, express mail, facsimile fees, delivery service, messenger fees, court fees, filing fees, and other costs reasonably incurred for the client. We will either advance such costs on our client's behalf or ask the client to pay them directly or in advance, where appropriate. Any fees of expert witnesses or other professionals retained with the prior consent of the client to assist in the legal representation may be billed directly to the client, who will pay such bills when incurred.

4. Monthly Statements. Unless a different billing period is agreed upon with our client, we will render monthly or other periodic statements indicating the current status of the account as to both fees and disbursements. These statements will be payable upon receipt. If statements are not paid in full within thirty days, the firm reserves the right to impose a late payment charge of 1 1/2% per month from the date of the statement until paid. At the time of rendering a statement we may not yet have the full bill for all expenses related to matters which have been handled for the client. Therefore, it is possible that an expense bill will be sent to a client after completion of the work. Should the client have any questions concerning a statement rendered by the firm, we welcome inquiries directly to the attorney primarily responsible for the work or to the firm's Controller. If it should become necessary for collection steps to be undertaken for collection of our fees or disbursements, the client will be responsible for the payment of all related collection costs and expenses, including reasonable attorney's fees.

5. Retainer. Any retainer to be paid by the client will normally be less than the firm's ultimate fees and disbursements. Such a retainer is not intended as a limitation upon our fees and disbursements. We may apply the retainer toward unpaid fees and disbursements from time to time as they accrue, in which event the client may be called upon to make additional deposits to restore the retainer to its original level.

6. Client Trust Accounts. The firm may not ethically deposit any funds belonging to clients in firm operating or personal bank accounts. In order to comply with the Rules of



Professional Conduct, we deposit all funds belonging to our clients into a trust bank account and we are obligated to account to all clients for the receipt and disbursement of those funds. We will notify clients of the receipt of funds belonging to clients and pay those to clients or on clients' behalf. Under current law and applicable Rules establishing a program known as Interest on Lawyers' Trust Accounts (IOLTA), a trust account can earn interest. All interest earned on such an account must by law be used for public purposes. Under no circumstances can the client or this firm or its attorneys personally receive any of the interest earned. Any interest earned on such accounts is delivered by the depositing bank directly to the Bar IOLTA foundation and is expended by that foundation in the public interest.

7. No Guaranteed or Contingent Outcome. While we will perform our professional services on behalf of the client to the best of our ability under the circumstances, we cannot and have not made any guarantees regarding the outcome of our professional efforts. Any expressions about the possible outcome of the matter or the results achievable are our best professional estimates only, and are limited by our knowledge at the time they are expressed.

8. Communications. Periodic billing statements will help our clients keep informed of the progress of the engagement. As requested, we will also send to the client copies of pertinent correspondence, documents and other materials prepared or received by us in the course of the representation. The client is encouraged to contact us as to any questions or comments regarding the services, fees, or status of the matter or as to any pertinent facts or considerations which may come to the attention of the client. Material information and documents received by the client should be forwarded to the firm without delay.

9. Attorney Assignment. Each client will have an attorney who shall have primary responsibility for the client's matters. When appropriate, work on the client's matters may be assigned to other attorneys in the firm who have a sufficient level of experience and time availability to handle competently and efficiently portions or all of the client's matters. In addition, assistance of non-attorney support personnel under the direct supervision of firm attorneys may be required, as appropriate.

10. Confidentiality. The firm will protect the confidence of the client and will not divulge confidential information concerning the client's business or legal matters, as required by the Rules of Professional Conduct. However, we understand that, unless you advise us to the contrary, you do not object to our mentioning to others our representation of you or our listing of your name as one of our clients in professional literature or in material published about this law firm.

11. Termination. The firm reserves the right to withdraw from representing the client upon written notice at any time, with or without cause. Likewise, the client may terminate the firm's services prospectively upon written notice to the firm.



Atlanta, GA  
 Charleston, SC  
 Charlotte, NC  
 Columbia, SC  
 Greenville, SC  
 Raleigh, NC  
 Spartanburg, SC  
 Washington, DC

February 23, 2021

Via E-mail [[abeeker@hvlnc.gov](mailto:abeeker@hvlnc.gov)]

Angela S. Beeker  
 City Attorney  
 City of Hendersonville, North Carolina  
 160 6th Avenue East  
 Hendersonville, NC 28792-4328

Re: **Bond Counsel for Limited Obligation Bonds (City of Hendersonville, North Carolina), Series 2021**

Dear Angela:

You have requested that our firm provide the City of Hendersonville ("City") with an engagement letter for services of Parker Poe Adams & Bernstein LLP as bond counsel for the above-described limited obligation bonds (the "*Bonds*"). Our understanding is that the City intends to provide for the issuance of approximately \$10,000,000 aggregate principal amount of the Bonds in order to finance the acquisition and construction of a parking deck and streetscape improvements in downtown. The Bonds may also be issued in an additional amount to refinance one or more of the City's existing installment financings. The City plans to use Robert W. Baird & Co., Inc., as underwriter for the Bonds. First Tryon Advisors is serving as the City's financial advisor. I will be the City's primary contact for our firm's work on the Bonds with support from Andy Walsh and Mike Larsen. The firm will provide services as bond counsel for a fee of \$65,000 if the Bonds are issued only for the new money projects, and \$70,000 if the Bonds include both the new money projects and the refinancings. The firm will charge an additional \$5,000 for the representation of a nonprofit corporation to be formed to assist the City with the financing. In each case the fee is inclusive of disbursements for such items as photocopying, long distance telephone, travel, scanning, express delivery and preparation of the transcripts. Our services include:

1. participation in meetings with City staff and, to the extent deemed necessary by the City staff, with the City Council, and the City's financial advisor in structuring the legal aspects of the financing;
2. preparation of an indenture of trust, installment financing contract and deed of trust, under which the Bonds will be issued and various resolutions, relating to the authorization, execution and delivery of the Bonds;

PPAB 6101238v1

Parker Poe Adams & Bernstein LLP 620 South Tryon Street Suite 800 Charlotte, NC 28202  
 t 704.372.9000 f 704.334.4706 www.parkerpoe.com

3. formation of the nonprofit corporation to serve as a counterparty on the installment financing contract and indenture and rendering necessary opinions related to the nonprofit's participation in the financing;
4. preparation of all other papers required as a condition precedent to the execution and delivery of the Bonds;
5. assistance to the City with respect to matters before the Local Government Commission and the rating agencies;
6. participation with underwriter's counsel and the underwriter in the reviewing documents related to the sale of the Bonds; and
7. delivery of an opinion as to the validity of the Bonds and the federal and state tax treatment of the interest on the Bonds, subject to usual and customary exceptions.

We wanted to make you aware that our firm has represented, may currently represent and/or expects to represent in the future, Robert W. Baird & Co., Inc., the underwriter for the Bonds, in transactions unrelated to the Bonds. Because the City is represented by the City Attorney in the transaction related to the Bonds we do not consider our representation as bond counsel for the Bonds to be a conflict of interest; however, if any issues arise that we believe would create a conflict of interest we will immediately inform you and work with the City Attorney to resolve the matter in a satisfactory manner.

We look forward to completing this transaction for the City. If the provisions set forth are consistent with your understanding, please sign below, keep a copy of the letter for yourself and return the original to us.

**PARKER POE ADAMS & BERNSTEIN LLP**



Scott E. Leo

Attachment

ACCEPTED BY:

**CITY OF HENDERSONVILLE**

---

Angela S. Beeker, City Attorney

---

(Date)

**PARKER POE ADAMS & BERNSTEIN LLP**  
**STANDARD TERMS OF ENGAGEMENT REGARDING LEGAL REPRESENTATION**

1. Scope of Work and Limitations. The scope of our work and the limitations on the services to be performed will be in accordance with the Engagement Letter.

2. No Guaranteed or Contingent Outcome. While we will perform our professional services on behalf of the client to the best of our ability under the circumstances, we cannot and have not made any guarantees regarding the outcome of our professional efforts. Any expressions about the possible outcome of the matter or the results achievable are our best professional estimates only, and are limited by our knowledge at the time they are expressed.

3. Communications. As requested, we will send to the client copies of pertinent correspondence, documents and other materials prepared or received by us in the course of the representation. The client is encouraged to contact us as to any questions or comments regarding the services, fees, or status of the matter or as to any pertinent facts or considerations which may come to the attention of the client. Material information and documents received by the client should be forwarded to the firm without delay.

4. Attorney Assignment. Each client will have an attorney who shall have primary responsibility for the client's matters. When appropriate, work on the client's matters may be assigned to other attorneys in the firm who have a sufficient level of experience and time availability to handle competently and efficiently portions or all of the client's matters. In addition, assistance of non-attorney support personnel under the direct supervision of firm attorneys may be required, as appropriate.

5. Confidentiality. The firm will protect the confidence of the client and will not divulge confidential information concerning the client's business or legal matters, as required by the Rules of Professional Conduct. However, we understand that, unless you advise us to the contrary, you do not object to our mentioning to others our representation of you or our listing of your name as one of our clients in professional literature or in material published about this law firm.

6. Termination. The firm reserves the right to withdraw from representing the client upon written notice at any time, with or without cause. Likewise, the client may terminate the firm's services prospectively upon written notice to the firm. If the client terminates the firm's services prior to completion of the financing, we will negotiate with the client to pay fees on a reasonable hourly basis for the time spent on the matter. Unless otherwise requested by the client, the firm will consider the representation terminated upon the completion of the financing.



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**SUBMITTER:** Melissa Justus      **MEETING DATE:** March 4, 2021

**AGENDA SECTION:** CONSENT AGENDA      **DEPARTMENT:** HPD

**TITLE OF ITEM,  
Presenter Name, Title:** Governor's Crime Commission Technology & Rescue Grant – Chief Blair Myhand

**SUGGESTED MOTION(S):** I move that the City of Hendersonville City Council approve the resolution accepting the Governor's Crime Commission Technology and Rescue Grant offer of \$24,480.00.

### SUMMARY:

The Department of Public Safety Governor's Crime Commission has awarded the City of Hendersonville a \$24,480.00 grant for FY20-21. Grant funds will be used to purchase non-lethal detainment equipment and communication devices. This is a no-match grant.

1. Stop the bleed IFAK Kits (40)
2. Tasers (6)
  - a. Taser Holsters (6)
  - b. Taser Battery parks (6)
  - c. Taser Cartridges (37)
  - d. Taser 4-year warranty (6)
3. Police Radios (4)

### ATTACHMENTS:

**Resolution**

**Tax Certification Form**

**GCC Letter**



Resolution #

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO ACCEPT  
THE GOVERNORS CRIME COMMISSION TECHNOLOGY AND RESCUE GRANT FOR  
THE HENDERSONVILLE POLICE DEPARTMENT OFFER OF \$24,480.00**

**WHEREAS**, the city is in receipt of a grant award from the Department of Public Safety Governor's Crime Commission in the amount of \$24,480.00; and

**WHEREAS**, the City Manager is the authorizing official for the grant; and

**WHEREAS**, the grant will assist the city in purchasing Forty (40) Stop the Bleed IFAK Kits, four (4) police radios, and six (6) Taser's and holsters, battery packs, cartridges with a 4-year warranty on each Taser for police officers. Having this equipment, police officers will have the ability to control bleeding on the onset of a critical incident. Our police officers will have a less than lethal option to effectively make arrests with limited use of force, building trust within our community in Hendersonville, NC; and

**WHEREAS**, City of Hendersonville Police Officers will successfully improve the high quality of public service expected; and

**WHEREAS**, the City of Hendersonville intends to act and perform duties in accordance with the award grant; and

**NOW, THEREFORE, BE IT RESOLVED BY THE HENDERSONVILLE CITY COUNCIL**

1. That the City of Hendersonville does hereby accept the Governor's Crime Commission Technology and Rescue Grant offer of \$24,480.00.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 4th day of March 2021.

---

Barbara G. Volk, Mayor

Attest:

---

Angela Reece, City Clerk

Approved as to form:

---

Angela S. Beeker, City Attorney



STATE OF NORTH CAROLINA  
OFFICE OF THE GOVERNOR

ROY COOPER  
GOVERNOR

October 1, 2020

Mike Vesely, Lieutenant  
Hendersonville Police Department  
160 6th Avenue, East  
Hendersonville, North Carolina 28792-3775

Dear Lt. Vesely:

The Governor's Crime Commission has completed another successful grant awards process. I am pleased to inform you that your application has been approved and that your agency has been selected to receive a grant award.

Funding for your project, *PROJ014430 - 2020 - Hendersonville Police Department - Technology and Rescue Improvement*, has been authorized and you will receive your award electronically in the coming weeks.

Commission members spend countless hours considering each application in an effort to select programs and projects that will best serve the residents of this state. Your proposal is an example of how we can help communities address challenges together. You are to be commended for your dedication, hard work and commitment to safer communities for families across North Carolina.

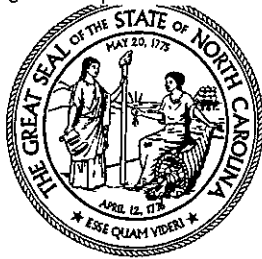
With kind regards, I am

Very truly yours,

A handwritten signature in dark ink, reading "Roy Cooper".

Roy Cooper





STATE OF NORTH CAROLINA  
**DEPARTMENT OF PUBLIC SAFETY**  
 GOVERNOR'S CRIME COMMISSION  
 1201 Front Street, Suite 200  
 Raleigh, NC 27609  
 Telephone: (919) 733-4564 Fax: (919) 733-4625  
<http://www.ncgccc.org>

Section 5, Item G.

## GRANT AWARD

**Applicant:** City of Hendersonville

**Authorizing Official:** John Connet  
City Manager

**Address:** 160 6th Ave East  
Hendersonville, North Carolina 28792-4328

**Vendor Number:** 566001242

**Project Name:** 2020 - Hendersonville Police Department - Technology and Rescue Improvement

**Implementing Agency:** Hendersonville Police Department

**Project Director:** Mike Vesely  
Lieutenant

**Project Number:** PROJ014430

**Account Manager:** Kevin Farrell

**Grant Period:** 10/01/2020 - 09/30/2021

### Budgets

Period	Personnel	Contractual	Travel	Supplies	Equipment	Indirect Costs	Total
Year 1	\$0.00	\$0.00	\$0.00	\$24,480.00	\$0.00	\$0.00	\$24,480.00
<b>Grant Budget Total</b>							<b>\$24,480.00</b>

Source	Federal Grant #	CFDA #	% Funding	Federal Award
2020::Byrne Justice Assistance Grants	2020-DJ-BX-0052	16.738	100%	\$24,480.00

In accordance with the laws and regulations of the United States and the State Of North Carolina, and on the basis of the grantee's application, the Department of Public Safety hereby awards to the foregoing grantee an award in the amount above.

This grant is subject to the conditions listed in the approved grant application as well as all applicable rules, regulations and conditions, as may prescribed by the Department of Public Safety. Special conditions are attached to this award.

This grant shall become effective, as of the start date of the grant period listed, once this original grant award has been properly executed on behalf of the grantee and returned to the Governor's Crime Commission, attention of the Grants Management Director. The grant award must be returned within 30 days of the date the award is mailed from the Governor's Crime Commission. No alterations of any kind may be made on this grant award.

### Authorizing Official

DocuSigned by:  
John Connet 1/21/2021 | 15:08:52 EST  
 Signature of Authorizing Official Date

John Connet, City Manager  
 Name and Title of Authorizing Official

### Governor's Crime Commission

DocuSigned by:  
Caroline C. Valand 1/20/2021 | 14:14:23  
 Signature of Director Date

Caroline C. Valand, Executive Director  
 Name and Title of Director

### Project Director

DocuSigned by:  
Mike Vesely 1/21/2021 | 09:15:10 EST  
 Signature of Project Director Date

Mike Vesely, Lieutenant  
 Name and Title of Project Director

☐ This award is subject to the attached conditions, which must be signed by both the authorizing official and the project director, and returned along with this Grant Award. No alterations of any kind may be made on this grant award.

## Federal Award Identification Worksheet

<b>Federal award identification :</b>	2020-DJ-BX-0052
<b>Project ID :</b>	PROJ014430
<b>Subrecipient :</b>	City of Hendersonville
<b>Federal Award Identification # (FAIN) :</b>	2020-DJ-BX-0052
<b>DUNS # :</b>	079056776
<b>Federal award date :</b>	Oct 01, 2019 - Sep 30, 2023
<b>Subaward period of performance start and end date :</b>	Oct 01, 2020 - Sep 30, 2021
<b>Federal funds obligated in this agreement :</b>	\$24,480.00
<b>Federal funds obligated to the subrecipient :</b>	\$24,480.00
<b>Total federal award :</b>	\$4,607,333.00
<b>Catalog of federal domestic assistance (CFDA) :</b>	Edward Byrne Memorial Justice Assistance Grant Program 16.738
<b>Indirect cost rate for the federal award :</b>	We do not receive an indirect cost rate
<b>Indirect cost rate to be used by the subrecipient (either a federally-approved rate, a rate negotiated between the pass-through entity and the subrecipient, or the de minimis indirect cost rate) :</b>	Direct/Allocated Costs Only
<b>Identification of whether the award is research and development (R&amp;D) :</b>	We do not fund research and development
<b>Pass through entity and awarding official :</b>	NC Governor's Crime Commission Caroline C. Valand caroline.valand@ncdps.gov
<b>Federal awarding agency :</b>	United States Department of Justice - Office of Justice Programs - Bureau of Justice Assistance
<b>Federal award description :</b>	The Edward Byrne Memorial Justice Assistance Grant Program (JAG) allows states and units of local government to support a broad range of activities to prevent and control crime based on their own state and local needs and conditions. Grant funds can be used for a large variety of law enforcement programs.



## Grant Certification – No Overdue Tax Debts NONGOVERNMENTAL ENTITIES ONLY

Date: 01-22-2021

To: Agency Head and Chief Fiscal Officer

### Certification:

We certify that The City of Hendersonville does not have any overdue tax debts, as defined by N.C.G.S. §105-243.1, at the federal, State, or local level. We further understand that any person who makes a false statement in violation of N.C.G.S. §143C-6-23(c) is guilty of a criminal offense punishable as provided by N.C.G.S. §143C-10-1.

### Sworn Statement:

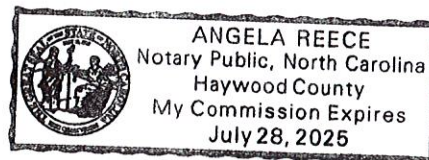
Barbera Volk (Mayor) and Mike Vesely being duly sworn, say that we are the Board Chair and Project Director, respectively, of City of Hendersonville of Henderson County in the State of North Carolina; and that the foregoing certification is true, accurate and complete to the best of our knowledge and was made and subscribed by us. We also acknowledge and understand that any misuse of State funds will be reported to the appropriate authorities for further action.

Barbera Volk

Board Chair

Mike Vesely, Jr.

Project Director



Sworn to and subscribed before me on the day of the date of said certification.

Angela Reece  
(Notary Signature and Seal)

My Commission Expires: July 28, 2025

If there are any questions, please contact the Governor's Crime Commission's Grants Management Director at (919) 733-4564 or you may contact the North Carolina Office of State Budget and Management, [NCGrants@osbm.nc.gov](mailto:NCGrants@osbm.nc.gov) - (919) 807-4795.

G.S. §105-243.1 defines: "Overdue tax debt. – Any part of a tax debt that remains unpaid 90 days or more after the notice of final assessment was mailed to the taxpayer. The term does not include a tax debt, however, if the taxpayer entered into an installment agreement for the tax debt under G.S. 105-237 within 90 days after the notice of final assessment was mailed and has not failed to make any payments due under the installment agreement."



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

<b>SUBMITTER:</b>	Tyler Morrow	<b>MEETING DATE:</b> 3-4-21
<b>AGENDA SECTION:</b>	CONSENT Council Action	<b>DEPARTMENT:</b> Community Development Department
<b>TITLE OF ITEM, Presenter Name, Title:</b>	Annexation: 1601 Old Spartanburg Road-Survey Resubmittal (P20-25-ANX) – Tyler Morrow, Planner II	
<b><u>SUGGESTED MOTION(S):</u></b>	I move the City Council adopt an <i>Ordinance To Amend Ordinance #20-0565, Which Extended The Corporate Limits Of The City Of Hendersonville, North Carolina As A Contiguous Annexation</i>	

**SUMMARY:** File # P20-25-ANX- The City of Hendersonville previously received a petition from Jeff Justus for contiguous annexation of PIN 9578-51-0342 located on Old Spartanburg Road that is approximately 4.17 acres. Please refer to the attached map and plat for additional information.

At your meeting of July 2<sup>nd</sup>, 2020, you accepted the Clerk's Certificate of Sufficiency and recommended a public hearing for the August 6<sup>th</sup>, 2020 City Council meeting. At the August 6<sup>th</sup>, 2020 City Council meeting, Council voted to approve the annexation petition from Jeff Justus. City staff then sent the annexation to the State for approval. Upon the State's review of the annexation, they denied approval due to an unclear map being included. City staff bring this annexation for you tonight with an updated survey to better show the property to be annexed and request that you adopt the attached *Ordinance To Amend Ordinance #20-0565, Which Extended The Corporate Limits Of The City Of Hendersonville, North Carolina As A Contiguous Annexation*.

**BUDGET IMPACT:**     \$0

**Is this expenditure approved in the current fiscal year budget?** NO

**If no, describe how it will be funded.** N/A

**PROJECT NUMBER:** N/A

**PETITION NUMBER:** P20-25-ANX

**ADDITIONAL PETITION NUMBER:** N/A

**PETITIONER NAME:** Jeff Justus

**ATTACHMENTS:** *Ordinance To Amend Ordinance #20-0565, Which Extended The Corporate Limits Of The City Of Hendersonville, North Carolina As A Contiguous Annexation*, Survey, Metes and Bounds, Deed, Application

Ordinance # \_\_\_\_\_

**AN ORDINANCE TO AMEND ORDINANCE #20-0565, WHICH EXTENDED THE CORPORATE LIMITS OF THE CITY OF HENDERSONVILLE, NORTH CAROLINA AS A CONTIGUOUS ANNEXATION**

Original Adoption date: 8-06-2020

Effective date: 8-06-2020

Amendment date: 3-04-2021

**WHEREAS**, the City Council of the City of Hendersonville, North Carolina, was petitioned under G.S. 160A-31 by Jeff Justus to annex certain territory into the primary municipal limits for the City of Hendersonville; and

**WHEREAS**, the City Clerk certified the sufficiency of the petition and a public hearing on the question of this annexation was held at Hendersonville, NC, at 5:45 p.m. on August 6, 2020, after due notice by publication on July 19, 2020 and July 26, 2020; and

**WHEREAS**, Ordinance #20-0565, *An Ordinance to Extend the Corporate Limits of the City of Hendersonville, North Carolina as a Contiguous Annexation*, was adopted on August 6, 2020, at the close of the public hearing, with an effective date of August 6, 2020, hereinafter “**Annexation Ordinance**”; and

**WHEREAS**, the **Annexation Ordinance** was recorded in Book 3565 at page 181 of the Henderson County Registry on September 21, 2020; and

**WHEREAS**, the City Council for the City of Hendersonville wish to amend the **Annexation Ordinance** to attach a survey depicting the legal description of the territory annexed by the **Annexation Ordinance** was based, the survey to become part and parcel of the **Annexation Ordinance**;

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Hendersonville, North Carolina:

**Section 1.** The *Annexation Ordinance* is hereby amended to include the survey depicting the legal description of the territory annexed by the City pursuant to the *Annexation Ordinance*, the survey being that survey prepared by Stacey Kent Rhodes, surveyor, bearing a job number of 19-095, dated January 2, 2020, attached hereto and incorporated herein by reference, hereinafter “*Survey*.”

**Section 2.** The *Survey* shall be attached to the *Annexation Ordinance* as Exhibit B, and shall be deemed incorporated by reference into the *Annexation Ordinance* for all intents and purposes.

**Section 3.** Except as modified by this amendment, the *Annexation Ordinance* shall remain in full force and effect as of August 6, 2020, and the same is hereby ratified.

**Section 4.** The Mayor of the City of Hendersonville shall cause the *Annexation Ordinance* appended by the *Survey* (as Exhibit B) to be re-recorded and this Ordinance To Amend Ordinance #20-0565, Which Extended The Corporate Limits Of The City Of Hendersonville, North Carolina As A Contiguous Annexation, hereinafter “*Amendment*,” to be recorded in the office of the Register of Deeds of Henderson County, and in the office of the Secretary of State at Raleigh, North Carolina. Both the appended *Annexation Ordinance* and this *Amendment* shall be delivered to the County Board of Elections, as required by G.S. 163-288.1.

Adopted by the City Council of the City of Hendersonville, North Carolina on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Attest: \_\_\_\_\_  
Barbara G. Volk, Mayor, City of Hendersonville

\_\_\_\_\_  
Angela L. Reece, City Clerk

Approved as to form:

\_\_\_\_\_  
Angela S. Beeker, City Attorney

STATE OF NORTH CAROLINA, COUNTY OF HENDERSON

I, Amy H. Knight, a Notary Public in Henderson County, State of North Carolina, do hereby certify that Barbara G. Volk in her capacity of Mayor of the City of Hendersonville; Angela L. Reece, in her capacity of City Clerk; and Angela S. Beeker, in her capacity as City Attorney, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

My commission expires: (Official Seal)

\_\_\_\_\_  
Amy H. Knight, Notary Public



# PLAT OF SURVEY FOR JEFF JUSTUS

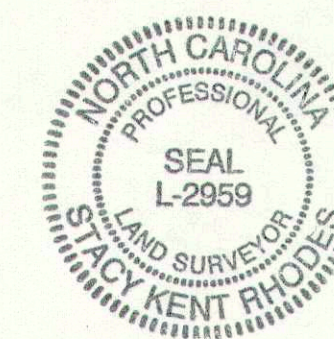
BEING THE PROPERTY DESCRIBED IN  
D.B. 1263, PG. 67

CITY OF HENDERSONVILLE (ETJ)  
HENDERSONVILLE TOWNSHIP  
HENDERSON COUNTY  
NORTH CAROLINA

JANUARY 2nd, 2020

I, STACY KENT RHODES, PROFESSIONAL LAND SURVEYOR,  
certify that this plat represents a survey of an existing parcel or  
parcels of land and does not create a new street or change an  
existing street. G.S. 42-30 (f) (1) (c)

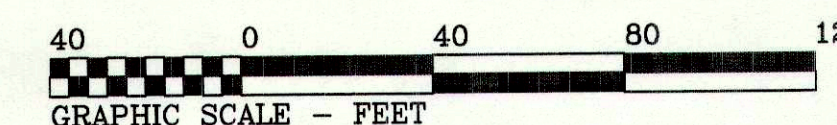
I, STACY KENT RHODES, a PROFESSIONAL LAND SURVEYOR,  
certify that this plat was drawn under my supervision from  
an actual survey made under my supervision  
(deed description recorded in Book AS, Page SHOWN);  
that the boundaries not surveyed are clearly indicated  
drawn from information found in Book AS, Page SHOWN;  
that the ratio of precision as calculated is 1/10,000;  
that this plat was prepared in accordance with G.S. 47-30  
as amended. Witness my original signature, registration  
number and seal.  
this 25th day of JANUARY, A.D., 20 21.



PROFESSIONAL LAND SURVEYOR

## NOTES:

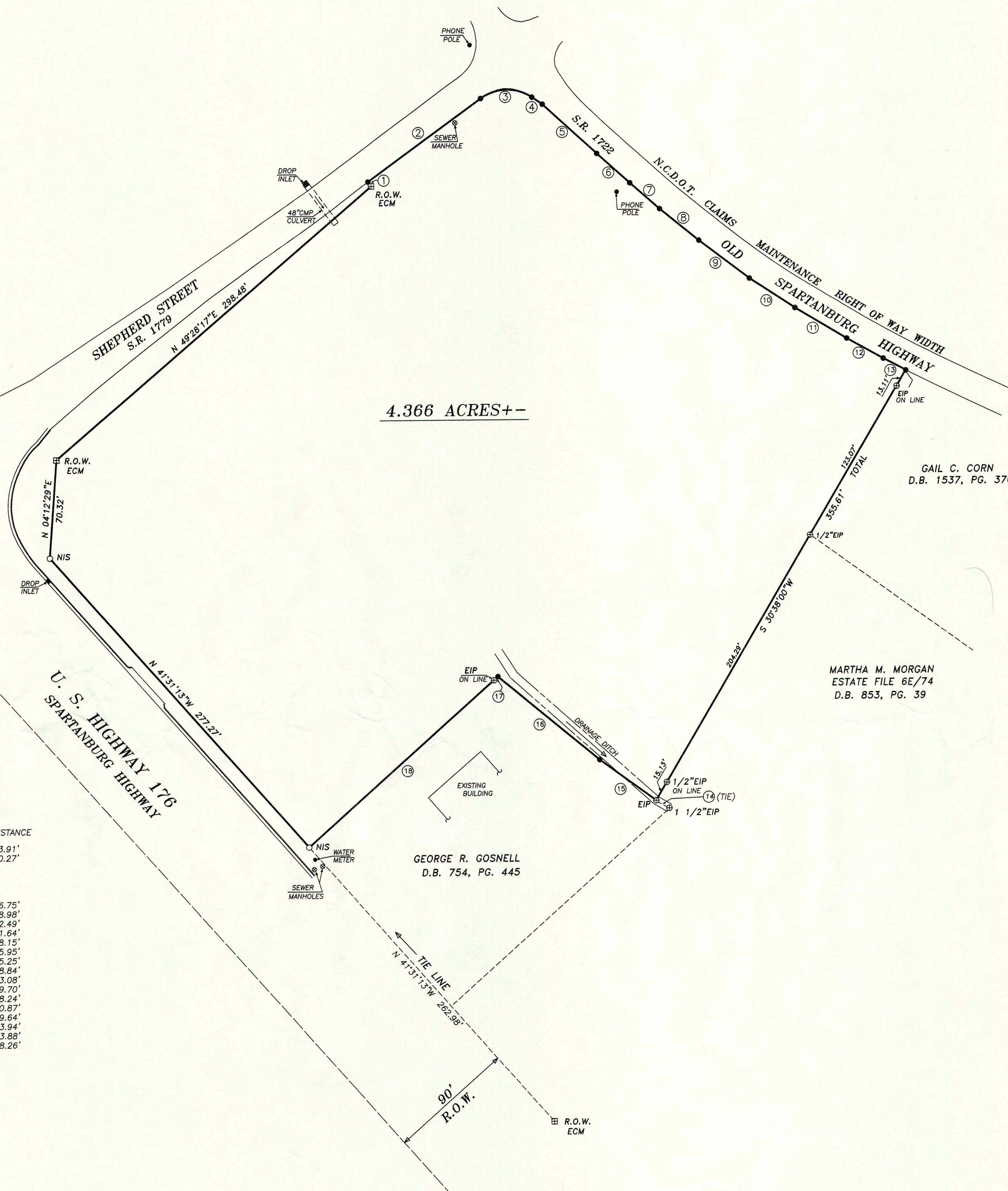
1. AREA DETERMINED BY COORDINATE COMPUTATION.
2. THE CURRENT OWNERS OF RECORD ARE THELMA INEZ BRADLEY, FRANK W. BRADLEY, AND JAMES TRAVIS GORDON, AS PER D.B. 1263, PG. 67.
3. AREA INCLUDES ANY AND ALL PORTIONS OF PROPERTY UNDER RIGHTS OF WAY AND/OR EASEMENTS, EITHER ACQUIRED OR CLAIMED.
4. THIS SUBJECT PROPERTY CURRENTLY LIES WITHIN THE CITY OF HENDERSONVILLE ETJ ZONING AREA, WITH PORTIONS ZONED C-3-SU, C-3, AND R-15.



SCALE 1" = 40'

REFERENCES: DEED: D.B. 1263, PG. 67 PLAT:	VICINITY MAP (NTS)	SURVEY BY <b>STACY KENT RHODES</b> NC PLS 2959
TAX ID REFERENCE: 9578510342 SCREEN FILE: 19-095A DWG FILE: 19-095A REVISIONS:		<b>WAGGONER &amp; RHODES</b> LAND SURVEYORS, PLLC. NC FIRM #C-1129 545 SOUTH GROVE STREET HENDERSONVILLE, NORTH CAROLINA 28792 PHONE: (828) 693-1022 FAX: (828) 693-4019
	DATE: JANUARY 2nd, 2020	DRAWN BY: SKR/DKS JOB NUMBER: 19-095

GRID NORTH  
N.A.D. 1983



## CALL TABLE

COURSE	BEARING	DISTANCE
1	N 36°26'34\"W	3.91'
2	N 54°03'42\"E	100.27'

RAD.: 32.00' TAN.: 22.45'  
LEN.: 39.15' DELTA: 70°05'57"

3	N 88°55'51\"E	36.75'
4	S 56°01'10\"E	8.98'
5	S 47°32'50\"E	52.49'
6	S 47°59'59\"E	31.64'
7	S 48°39'22\"E	28.15'
8	S 50°48'40\"E	35.95'
9	S 52°48'24\"E	45.25'
10	S 55°49'07\"E	38.64'
11	S 59°10'51\"E	43.08'
12	S 60°48'07\"E	29.70'
13	S 61°49'50\"E	18.24'
14	N 59°47'59\"W	10.87'
15	N 53°58'02\"W	49.64'
16	N 50°23'49\"W	93.94'
17	S 48°28'47\"W	3.88'
18	S 48°28'47\"W	178.26'

## LEGEND

- EXISTING CORNER MONUMENT AS NOTED
- NEW IRON PIPE SET OR AS NOTED
- COMPUTED POINT—NOT STAKED
- CONCRETE MONUMENT AS NOTED





CITY OF HENDERSONVILLE  
DEVELOPMENT ASSISTANCE DEPARTMENT  
100 N. King St. ~ Hendersonville, NC ~ 28792  
Phone (828) 697-3010 ~ Fax (828) 697-6185  
www.cityofhendersonville.org

PETITION REQUESTING ANNEXATION

The following are required to constitute a complete application for voluntary annexation:

- ~ This form including the property owner's signature
- ~ A copy of the deed indicating ownership of the property.
- ~ A survey plat (8 1/2" by 11") of the property prepared by a registered surveyor licensed to practice in the state of North Carolina.
- ~ A typed boundary description of the property, in digital format if possible.

Date

6/8/2020

Location / Property Address

1601 OLD SPARTANBURG Rd.

List 10 digit PIN or 7 digit PID number

9578510342

Does this property adjoin the present City Limits?

☒ YES

☐ NO

Is the property within the ETJ?

☒ YES

☐ NO

Reason for annexation

WATER + SEWER

Applicant Name

JEFF C. Justus

Address

303 SOUTH Church Street

Phone

691 5500

Fax

692 5500

Email

JeffJustus@MORRIS  
bb.net

Property Owner: Name

SAME

Address

SAME

Signature

Jeff C. Justus

Printed Name

Jeff C. Justus

Official Use:

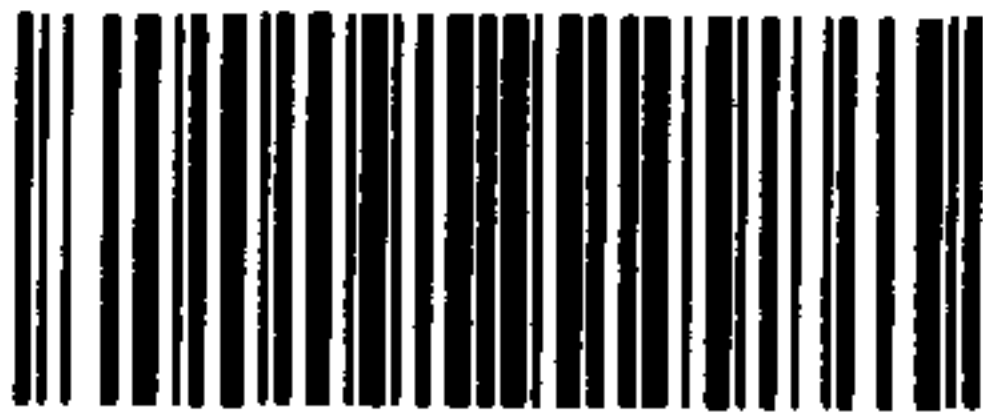
DATE RECEIVED: 6/9/2020

BY

XXXX

FEE RECEIVED \$





This document presented and filed:  
03/06/2020 01:29:31 PM

WB

WILLIAM LEE KING, Henderson COUNTY, NC  
Transfer Tax: \$1,670.00

Excise Tax: \$ 1670.00

Recording Time, Book and Page

✓ Return To: Stanford K. Cloutz box

This instrument prepared by: **THERON E. MULLINAX, JR.**, ATTORNEY AT LAW  
MULLINAX LAW FIRM, P. O. Box 2648, Hendersonville, NC 28793

DEED PREPARATION ONLY - NO TITLE EXAMINATION PERFORMED

Parcel #: 113306 Deed Book 1263, Page 67, Henderson County Registry

Description for Index: (4.366 acres ) 1601 Old Spartanburg Road, Hendersonville, NC 28792

**NORTH CAROLINA GENERAL WARRANTY DEED**

THIS DEED made this 2nd day of March , 2020, by and between

GRANTOR

GRANTEE

**THELMA INEZ BRADLEY, Widow**  
**As to a One-Half**  
**(1/2) undivided interest AND**  
**JAMES TRAVIS GORDON, Single**  
**As to a One-Half (1/2) undivided interest**

**JEFF JUSTUS**

1007 Shepherd Street  
Hendersonville, NC 28792

303 South Church Street  
Hendersonville, NC 28792

The designated Grantors and Grantees as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

The property herein conveyed \_\_\_\_\_ does x does not include the primary residence of the Grantor.

WHEREAS, the below described real property was acquired by Thelma Inez Bradley and husband, Frank W. Bradley, owning a one-half (1/2) undivided interest; and James Travis Gordon, owning a one-half (1/2) undivided interest; by deed recorded in Deed Book 1263, Page 67 of the Henderson County Registry; and,

WHEREAS, FRANK W. BRADLEY died a resident of the State of North Carolina on May 8, 2008 and Thelma Inez Bradley became the owner by survivorship of a one-half (1/2) undivided interest by survivorship.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantees, the receipt of which is hereby

acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantees in fee simple, all that certain lot or parcel of land situated in **Hendersonville** Township, Henderson County, North Carolina and more particularly described as follows:

BEING all that property described on Exhibit A attached hereto and incorporated into this instrument as if fully set forth herein.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantees in fee simple.

And the Grantor covenants with the Grantees, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever except for the exceptions hereinafter stated. Title to the property hereinabove described is subject to the following exceptions:

2020 Henderson County ad valorem property taxes

All rights of way, easements, reservations, restrictions and amendment to restrictions, if any, of public record of even date herewith.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal, the day and year first above written.

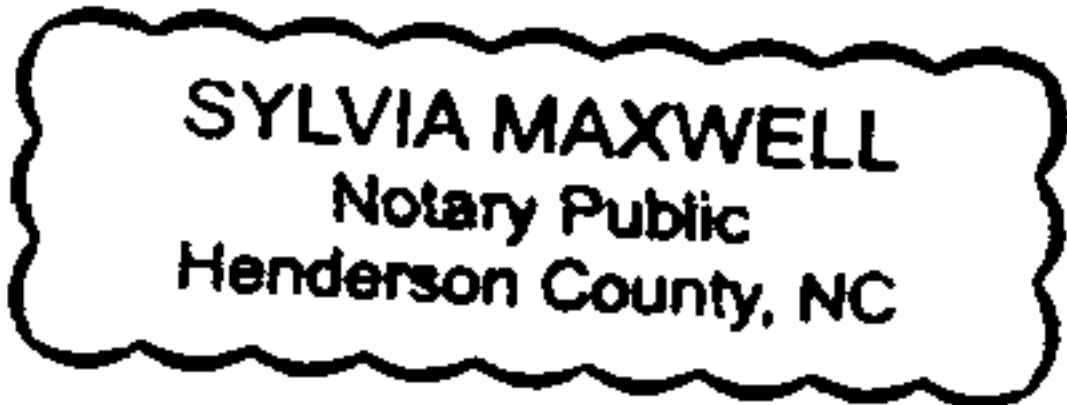
*Thelma Inez Bradley* (SEAL)  
Thelma Inez Bradley, Widow  
*James Travis Gordon* (SEAL)  
James Travis Gordon, Single

STATE OF NORTH CAROLINA  
COUNTY OF Henderson

I, *Sylvia Maxwell*, a Notary Public in and for the above County and State, do hereby certify that **THELMA INEZ BRADLEY, Widow, and JAMES TRAVIS GORDON, Single**, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and seal, this the 2nd day of March, 2020.

My commission expires:  
5-16-24



*Sylvia Maxwell*  
NOTARY PUBLIC



EXHIBIT A

Bradley/Gordon /Justus Description

BEGINNING at a new iron stake in the northern boundary of the right-of-way of U.S. Highway 176 (Spartanburg Highway) with said new iron stake being the southernmost corner of that property described in deed found in Deed Book 1263 at Page 67 in the office of the Registry for Henderson County, North Carolina, and said new iron stake is also the westernmost corner of the Gosnell tract found in Deed Book 754 at Page 445 of the records of the Henderson County Registry and moving thence from said beginning point along and with the approximate northern boundary of Highway 176, North 41 deg. 31 min. 13 sec. West 277.27 feet to a new iron stake near the intersection of Highway 176 with Shepherd Street (S.R. 1779); thence with the southern boundary of Shepherd Street, North 04 deg. deg. 12 min. 29 sec. East 70.32 feet to an existing right-of-way corner monument; thence along and with the approximate southern boundary of the right-of-way of Shepherd Street, North 49 deg. 28 min. 17 sec. East 298.48 feet to an existing right-of-way monument; thence 18 courses as follows:

North 36 deg. 26 min. 34 sec. West 3.91 feet; North 54 deg. 03 min. 42 sec. East 100.27 feet; thence on an arc to the right in a northeasterly direction with the arc having a radius of 32.00 feet, an arc length of 39.15 feet , chord bearing and distance are North 88 deg. 55 min. 51 sec. East 36.75 feet; thence South 56 deg. 01 min. 10 sec. East 8.98 feet; South 47 deg. 32 min. 50 sec. East 52.49 feet; South 47 deg. 59 min. 59 sec. East 31.64 feet; South 48 deg. 39 min. 22 sec. East 28.15 feet; South 50 deg. 48 min. 40 sec. East 35.95 feet; South 52 deg. 48 min. 24 sec. East 45.25 feet; South 56 deg. 49 min. 07 sec. East 38.84 feet; South 59 deg. 10 min. 51 sec. East 43.08 feet; South 60 deg. 48 min. 07 sec. East 29.70 feet; South 61 deg. 49 min. 50 sec. East 18.24 feet; thence North 59 deb. 47 min. 59 sec. West 10.87 feet; North 53 deg. 58 min. 02 sec. West 49.64 feet; North 50 deg. 23 min. 49 sec. West 93.94 feet; thence South 48 deg. 28 min. 47 sec. West 3.88 feet and South 48 deg. 28 min. 47 sec. West 178.26 feet to the point and place of BEGINNING, and containing 4.366 acres more or less according to a survey for Jeff Justus by Stacy Kent Rhodes dated January 2, 2020 and being Job Number 19-095.

This conveyance is made and accepted subject to the rights-of-way of U. S. Highway 176 Shepherd Street and Old Spartanburg Highway as they extend to their full legal widths.

For legal reference see deed found in Deed Book 1263 at Page 67 of the Henderson County registry.

This conveyance is further subject to such other easements, restrictions, and rights-of-way of record, if any.



This document presented and filed:  
03/06/2020 01:29:31 PM

WB

WILLIAM LEE KING, Henderson COUNTY, NC  
Transfer Tax: \$1,670.00

Excise Tax: \$ 1670.00

Recording Time, Book and Page

✓ Return To: Stanford K. Cloutz box

This instrument prepared by: **THERON E. MULLINAX, JR.**, ATTORNEY AT LAW  
MULLINAX LAW FIRM, P. O. Box 2648, Hendersonville, NC 28793

DEED PREPARATION ONLY - NO TITLE EXAMINATION PERFORMED

Parcel #: 113306 Deed Book 1263, Page 67, Henderson County Registry

Description for Index: (4.366 acres ) 1601 Old Spartanburg Road, Hendersonville, NC 28792

### NORTH CAROLINA GENERAL WARRANTY DEED

THIS DEED made this 2nd day of March, 2020, by and between

GRANTOR	GRANTEE
<b>THELMA INEZ BRADLEY, Widow</b> <b>As to a One-Half</b> <b>(1/2) undivided interest AND</b> <b>JAMES TRAVIS GORDON, Single</b> <b>As to a One-Half (1/2) undivided interest</b>	<b>JEFF JUSTUS</b>
1007 Shepherd Street Hendersonville, NC 28792	303 South Church Street Hendersonville, NC 28792

The designated Grantors and Grantees as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

The property herein conveyed \_\_\_\_\_ does x does not include the primary residence of the Grantor.

WHEREAS, the below described real property was acquired by Thelma Inez Bradley and husband, Frank W. Bradley, owning a one-half (1/2) undivided interest; and James Travis Gordon, owning a one-half (1/2) undivided interest; by deed recorded in Deed Book 1263, Page 67 of the Henderson County Registry; and,

WHEREAS, FRANK W. BRADLEY died a resident of the State of North Carolina on May 8, 2008 and Thelma Inez Bradley became the owner by survivorship of a one-half (1/2) undivided interest by survivorship.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantees, the receipt of which is hereby

acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantees in fee simple, all that certain lot or parcel of land situated in **Hendersonville** Township, Henderson County, North Carolina and more particularly described as follows:

BEING all that property described on Exhibit A attached hereto and incorporated into this instrument as if fully set forth herein.


TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantees in fee simple.

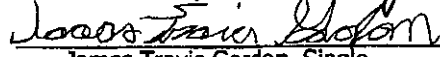
And the Grantor covenants with the Grantees, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever except for the exceptions hereinafter stated. Title to the property hereinabove described is subject to the following exceptions:

2020 Henderson County ad valorem property taxes

All rights of way, easements, reservations, restrictions and amendment to restrictions, if any, of public record of even date herewith.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal, the day and year first above written.

 (SEAL)  
Thelma Inez Bradley, Widow

 (SEAL)  
James Travis Gordon, Single

STATE OF NORTH CAROLINA  
COUNTY OF Henderson

I, Sylvia Maxwell, a Notary Public in and for the above County and State, do hereby certify that **THELMA INEZ BRADLEY, Widow, and JAMES TRAVIS GORDON, Single**, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and seal, this the 2nd day of March, 2020.

My commission expires:  
5-16-24

  
NOTARY PUBLIC

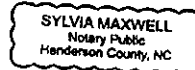


EXHIBIT A

Bradley/Gordon /Justus Description

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*State of North  
Carolina  
Department of the Secretary  
of State*

ELAINE F. MARSHALL  
SECRETARY OF STATE

DIVISION OF LAND RECORDS

October 7, 2020

Ms. Angela Reece, City Clerk  
City of Hendersonville  
106 6<sup>th</sup> Ave. E.  
Hendersonville, NC 28792

Dear Ms. Reece:

RE: Ordinance: ON 20-0565 Adopted: 8-6-20

This is to inform you that the above referenced annexation filing has been rejected because of:

- ☒ Map is illegible or insufficient
- ☐ Incomplete documentation
- ☐ Inadequate description
- ☐ Missing Ordinance Number / Identifying Number
- ☐ Other (see below)

1. The survey is not been signed by the surveyor.

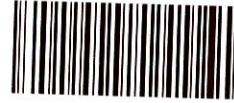
2. The map attached to the ordinance is not legible. The reduced copy of the original survey has characters in the word and/or numbers that are blurry or run together making them unreadable.

If assistance is needed, please contact us at [annexations@sosnc.gov](mailto:annexations@sosnc.gov)

*Section 5, Item H.*

Land Records Management Division





This document presented and filed:  
09/21/2020 12:25:47 PM

WILLIAM LEE KING, Henderson COUNTY, NC

↓  
CITY BOX

Ordinance #20-0565

**AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF  
HENDERSONVILLE, NORTH CAROLINA  
AS A CONTIGUOUS ANNEXATION**

Adopted date:	8-06-2020
Effective date:	8-06-2020
Total Acreage:	4.17 acres
Petitioner:	Jeff Justus

**WHEREAS**, the City Council of the City of Hendersonville, North Carolina, has been petitioned under G.S. 160A-31 to annex the area described below; and

**WHEREAS**, the City Council has by resolution directed the City Clerk to investigate the sufficiency of the petition; and

**WHEREAS**, the City Clerk has certified the sufficiency of the petition and a public hearing on the question of this annexation was held at Hendersonville, NC, at 5:45 p.m. on August 6, 2020, after due notice by publication on July 19, 2020 and July 26, 2020; and

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Hendersonville, North Carolina:

**Section 1.** By virtue of the authority granted by G.S. 160A-31, the following described contiguous territory is hereby annexed and made part of City of Hendersonville as of August 6, 2020:

METES AND BOUNDS DESCRIPTION

3460/367

Bradley/Gordon /Justus Description

BEGINNING at a new iron stake in the northern boundary of the right-of-way of U.S. Highway 176 (Spartanburg Highway) with said new iron stake being the southernmost corner of that property described in deed found in Deed Book 1263 at Page 67 in the office of the Registry for Henderson County, North Carolina, and said new iron stake is also the westernmost corner of the Gosnell tract found in Deed Book 754 at Page 445 of the records of the Henderson County Registry and moving thence from said beginning point along and with the approximate northern boundary of Highway 176, North 41 deg. 31 min. 13 sec. West 277.27 feet to a new iron stake near the intersection of Highway 176 with Shepherd Street (S.R. 1779); thence with the southern boundary of Shepherd Street, North 04 deg. deg. 12 min. 29 sec. East 70.32 feet to an existing right-of-way corner monument; thence along and with the approximate southern boundary of the right-of-way of Shepherd Street, North 49 deg. 28 min. 17 sec. East 298.48 feet to an existing right-of-way monument; thence 18 courses as follows:

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This conveyance is further subject to such other easements, restrictions, and rights-of-way of record, if any.

Recorded in the Henderson County, NC Register of Deeds

**Section 2.** Upon and after August 6, 2020, the above described territory and it citizens and property shall be subject of all debts, laws, ordinances and regulations in force in City of

Hendersonville, North Carolina. Said territory shall be subject to municipal taxes according to G.S. 160A-58.10.

**Section 3.** The Mayor of the City of Hendersonville shall cause to be recorded in the office of the Register of Deeds of Henderson County, and in the office of the Secretary of State at Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1 above, together with a duly certified copy of this ordinance. Such a map shall be delivered to the County Board of Elections, as required by G.S. 163-288.1.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 6<sup>th</sup> day of August, 2020.

Attest:

Angela L. Reece  
Angela L. Reece, City Clerk

Barbara G. Volk  
Barbara G. Volk, Mayor, City of Hendersonville

Approved as to form:

Samuel H. Fritschner  
Samuel H. Fritschner, City Attorney

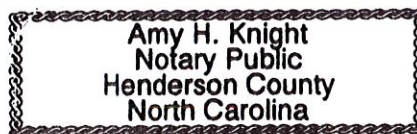
STATE OF NORTH CAROLINA, COUNTY OF HENDERSON

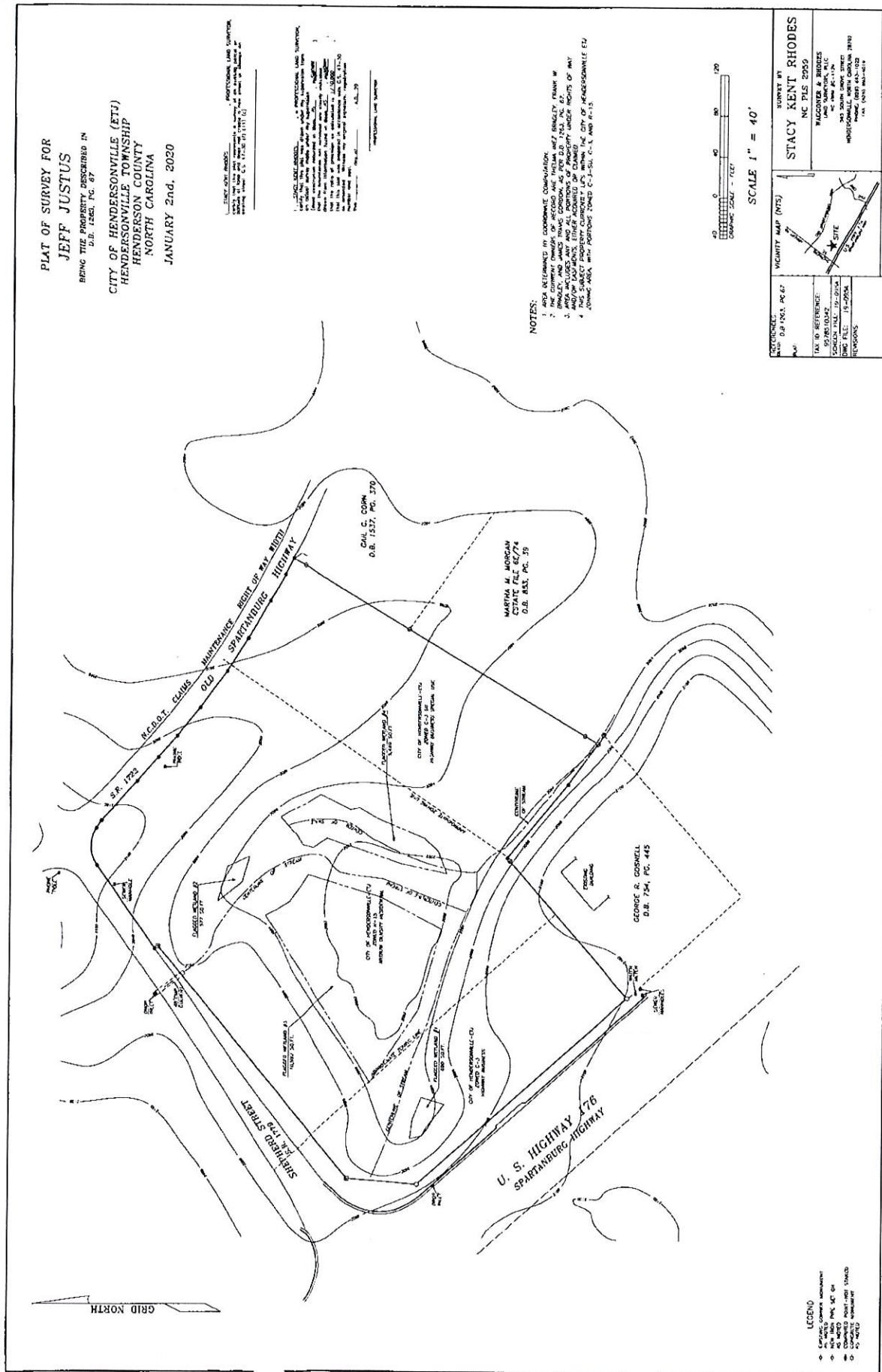
I, Amy H. Knight, a Notary Public in Henderson County, State of North Carolina, do hereby certify that Barbara G. Volk in her capacity of Mayor of the City of Hendersonville; Angela L. Reece, in her capacity of City Clerk; and Samuel H. Fritschner, in his capacity as City Attorney, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this 12<sup>th</sup> day of August, 2020.

My commission expires: 9-23-2024

Amy H. Knight  
Amy H. Knight  
expires 9-23-2024





This map may not be a survey and has not been reviewed by a local government agency for compliance with any applicable land development regulations and has not been reviewed for compliance with recording requirements for plats.



## CITY OF HENDERSONVILLE

# AGENDA ITEM SUMMARY

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<b>SUBMITTER:</b>	John Connet	<b>MEETING DATE:</b> 03/04/2021
<b>AGENDA SECTION:</b>	Presentation Only	<b>DEPARTMENT:</b> Administration
<b>TITLE OF ITEM, Presenter Name, Title:</b>	Introduction and Swearing In Ceremony for Chief Blair Myhand – <i>John Connet, City Manager</i>	
<b><u>SUGGESTED MOTION(S):</u></b>	NA	

---

### SUMMARY:

I will introduce Blair Myhand as the new Hendersonville Chief of Police and ask Mayor Volk to administer the Oath of Office.

**BUDGET IMPACT:**     \$

**Is this expenditure approved in the current fiscal year budget?** YES / NO

**If no, describe how it will be funded.**

**PROJECT NUMBER:** N/A

**PETITION NUMBER:** N/A

**ADDITIONAL PETITION NUMBER:** N/A

**PETITIONER NAME:** N/A

**ATTACHMENTS:**

Oath of Office





# Oath of Office

## Chief of Police

I, **Blair Myhand**, do solemnly swear that I will be alert and vigilant to enforce the criminal laws of the State of North Carolina; that I will not be influenced in any matter on account of personal bias or prejudice; that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith; and that I will faithfully and impartially discharge and execute the duties of my office as **Chief of Police of the City of Hendersonville** according to the best of my skill, abilities, and judgement; so help me, God.”

\_\_\_\_\_  
(Blair Myhand)

\_\_\_\_\_  
Date

On March 4, 2021, **Blair Myhand** personally appeared before me and took the Oath of Law Enforcement Officers and signed the above document as witnessed.

Seal

\_\_\_\_\_  
Barbara G. Volk, Mayor  
City of Hendersonville

Attest:

\_\_\_\_\_  
Angela L. Reece, City Clerk  
City of Hendersonville



## CITY OF HENDERSONVILLE

# AGENDA ITEM SUMMARY

---

<b>SUBMITTER:</b>	Jennifer Harrell	<b>MEETING DATE:</b>	March 4, 2021
<b>AGENDA SECTION:</b>	Presentation Only	<b>DEPARTMENT:</b>	Human Resources
<b>TITLE OF ITEM, Presenter Name, Title:</b>	Recognition of LuAnn Welter, MESH Public Sector Certification – <i>Jennifer Harrell, HR Director</i>		
<b><u>SUGGESTED MOTION(S):</u></b>	N/A		

---

### SUMMARY:

Lu Ann Welter was recently notified by the MESH Board of Directors that she had successfully completed the requirements and earned the **Public Sector- Manager of Environmental Safety and Health** Certificate. The MESH Certificate is awarded to individuals who demonstrate achievement through education in occupational safety, health, and the environment. MESH is sponsored by the Safety and Health Council of North Carolina, NC State University, and the North Carolina Department of Labor.

The MESH program is designed to increase the professionalism of environmental, safety, and health managers of commercial, residential or governmental construction sites in North Carolina through a rigorous series of continuing education programs. The MESH program strives to recognize environmental managers and raise industry standards and increase the value of the practitioners to their employers and others to whom their services are provided.

This is the second MESH Certificate Lu Ann has earned.

**BUDGET IMPACT:**     \$0.00

**Is this expenditure approved in the current fiscal year budget?** YES / NO

**If no, describe how it will be funded.** N/A

**PROJECT NUMBER:** N/A

**PETITION NUMBER:** N/A

**ADDITIONAL PETITION NUMBER:** N/A

**PETITIONER NAME:** N/A

**ATTACHMENTS:** N/A

EnterTextHere





## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

<b>SUBMITTER:</b>	Tyler Morrow	<b>MEETING DATE:</b> March 4 <sup>th</sup> , 2021
<b>AGENDA SECTION:</b>	Council Action	<b>DEPARTMENT:</b> Community Development Department
<b>TITLE OF ITEM, Presenter Name, Title:</b>	Conditional Rezoning: Duncan Terrace Apartments (P20-48-CZD) – <i>Tyler Morrow, Planner II</i>	

**SUGGESTED MOTION(S):**      1) **For Recommending Approval:**

I move that City Council adopt an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of the subject property from R-20 Low density residential to PRD Planned Residential Development Conditional Zoning District, based on the site plan submitted by the applicant and subject to the limitations and conditions stipulated on the List of Uses and Conditions, finding that the rezoning is consistent with the Comprehensive Plan's Future Land Use map, and that the rezoning is reasonable and in the public interest for the following reasons:

**[please state your reasons; see item #3 for the categories to be considered prior to adopting or denying an ordinance amendment as outlined in Section 11-4 of the City Zoning Ordinance]**

2) **For Recommending Denial:**

I move City Council not adopt an ordinance rezoning the subject property for the following reasons:

**[please state your reasons; see item #3 for the categories to be considered prior to adopting or denying an ordinance amendment as outlined in Section 11-4 of the City Zoning Ordinance]**

3) **Suggested Categories For Reasons for either approval or denial**

1. Comprehensive Plan consistency: consistency with the Comprehensive Plan and amendments thereto.
2. Compatibility with surrounding uses: whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject property.

- 3. Changed conditions: whether and the extent to which there are changed conditions, trends or facts that require an amendment.
- 4. Public interest: whether and the extent to which the proposed amendment would result in a logical and orderly development pattern that benefits the surrounding neighborhood, is in the public interest and promotes public health, safety, and general welfare.
- 5. Public facilities: whether and the extent to which adequate public facilities and services such as water supply, wastewater treatment, fire and police protection and transportation are available to support the proposed amendment.
- 6. Effect on natural environment: whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment including but not limited to water, air, noise, storm water management, streams, vegetation, wetlands and wildlife.

**SUMMARY:**

The City is in receipt of a Conditional Rezoning application from Bobby Funk of Mills Construction, Green Holdings LLC and North Main Street Properties of Hendersonville, LLC. for the development of 7, 3 story multifamily structures and a community center on approximately 8.66 acres. The subject property is identified as parcel numbers 9569-95-7758, 9569-95-5941 and 9569-96-4013. One parcel currently contains a vacant single-family structure at 710 Duncan Hill Road. The applicant is requesting to rezone the subject property from R-20 Low Density Residential to PRD Planned Residential Development Conditional Zoning District.

**BUDGET IMPACT:** N/A

**Is this expenditure approved in the current fiscal year budget?** N/A

**If no, describe how it will be funded.**

N/A

**PROJECT NUMBER:** 21105 **PETITION NUMBER:** P20-48-CZD

**ADDITIONAL PETITION NUMBER:** P20-49-ANX

**PETITIONER NAME:** Bobby Funk of Mills Construction, Green Holdings LLC and North Main Street Properties of Hendersonville, LLC

**ATTACHMENTS:**

Staff report, ordinance, list of uses and conditions, site plan, elevations, tree survey, existing conditions photos, various planning maps, neighborhood compatibility minutes.

Order:	J000674188	Pubs:	2,3	Rate:	LE
Phone:	(828)697-3003	Class:	0001		
Account:	32002031	Start Date:	02/21/2021		
Name:	ATTN: Angela	Stop Date:	02/28/2021	Payments:	\$ 0.00
Caller:	Angela Reece	Insertions:	4	Balance:	\$ 146.40
Taken By:	S037	Columns:	2	Lines:	81
Schedule:	HTN Times News 2/21 1x, s2/28 1x			Taken On:	02/18/2021
SalesRep	Nancy Mullinax				

## PUBLIC HEARING NOTICE

Notice is hereby given that the City of Hendersonville City Council will hold two public hearings and one quasi-judicial, evidentiary hearing on Thursday, March 4, 2021, at 5:45 p.m., in City Hall on the Second Floor located at 160 Sixth Avenue E, Hendersonville NC to consider the following:

**I. Conditional Zoning District** - Application for a conditional rezoning from Bobby Funk, Green Holdings LLC and North Main Street Properties of Hendersonville, LLC. The applicants are requesting to rezone the subject property, PIN 9569-95-7758, 9569-95-5941 and 9569-96-4013 and located on Duncan Hill Road, from R-20, Low Density Residential District to PRD CZD, Planned Residential Development Conditional Zoning District for the construction of an 84-unit multi-family development.

**II. Conditional Zoning District**- Application for a conditional rezoning from Henderson County Hospital Corporation and Henderson County. The applicants are requesting to rezone the subject property, PIN 9569-50-9133, 9569-50-8164, 9569-50-7165 and 9569-59-9771 and located on N. Justice Street, Brown Street and 9th Avenue, from PCD, Planned Commercial Development and MIC, Medical, Institutional, Cultural District to PCD CZD, Planned Commercial Development Conditional Zoning District for the removal of the existing EMS building and improvements to the hospital entrance and parking.

**III. Special Use Amendment** - Application from Tony Bloemsma and Beacon Commons Property, LLC for Beacon Commons located on PIN 9568-75-7715, at 475 S. Church Street. The applicant has submitted amended site plans for the previously approved Beacon Commons development that includes a mix of commercial and residential units. The applicant has requested to change some of the commercial space to residential condos. This change requires an amendment to the existing Special Use Permit for the Beacon Commons development. **This will be conducted as a quasi-judicial, evidentiary hearing. The Council may only consider evidence introduced at the hearing. Persons wishing to participate in this hearing must attend the hearing in person. Individuals should not contact City Council members regarding this application prior to the hearing.**

The Mayor and City Council Members will attend the hearings in person. In-person attendance by the public will also be permitted; however, in compliance with Governor Cooper's Executive Orders and social distancing guidelines, in person attendance of the public will be limited as spacing permits. For matters I and II above, public hearing comments will be accepted from those attending in person at the designated time at this meeting. The public may also view and verbally comment during this public hearing live via ZOOM. For security reasons screen sharing will not be allowed. The meeting instructions to join by Zoom will be available on the City's website by visiting <https://www.hendersonvillenc.gov/events-calendar>. Comment period instructions will also be displayed at the appropriate times during the meeting.

Anyone wishing to submit written public comment for matters I and II public hearings prior to the meeting may visit <https://www.hendersonvillenc.gov/comment> to submit their comment. Written comments must be submitted by **noon on March 4, 2021** to be considered by the City Council. If comments include **photo(s) or video they must be submitted by 8:00 a.m. on March 3, 2021.**

For matter III, persons must attend in person if they wish to participate, and only evidence concerning the application for the special use amendment presented at the quasi-judicial, evidentiary hearing, will be considered by City Council. All testimony will be given under oath. General public comments will not be received.

The City of Hendersonville is committed to providing accessible facilities, programs, and services for all people in compliance with the Americans with Disabilities Act (ADA). Should you need assistance or a particular accommodation for this meeting please contact the City Clerk, Angela Reece at 697-3005 no later than 24 hours in advance of the meeting.

2/21, 2/28, 2021

674188

Attention: \_\_\_\_\_ Fax: \_\_\_\_\_

This is a final proof. If any information is incorrect, please contact your sales representative prior to the deadline of the first insertion. Otherwise your order is accepted as having been approved.

City of Hendersonville

**Certification of Mailing of Public Notice**

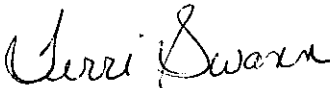
IN RE: Duncan Terrace

File # P20-48-CZD

I hereby certify that official notice of the City Council Meeting on March 4, 2021, has been sent with regard to this matter by U.S. Mail on the date indicated below and as specified in this document.

The parties to whom notice was mailed are indicated on the sheets attached hereto as Exhibit A. Those listed on Exhibit A were mailed the letter, a copy of which is attached as Exhibit B.

Date Mailed: 02.17.21



Terri Swann  
Administrative Aide

Henderson County, North Carolina

I certify that the following person personally appeared before me this day, acknowledging to me that she signed the foregoing document:

\_\_\_\_\_.

Date: \_\_\_\_\_

Notary Signature: \_\_\_\_\_

Notary Printed Name: \_\_\_\_\_  
(Official Seal)

My Commission Expires: \_\_\_\_\_

L & R RENTAS; HOLBERT, LARRY GEN  
PRTNR; GRAY, RONNIE GEN PRTNR  
PO BOX 1275  
MOUNTAIN HOME, NC 28758

STRAUB, SYLVIANE F  
723 DUNCAN HILL ROAD  
HENDERSONVILLE, NC 28792

CORMIER, CHRISTOPHER P.  
P. O. BOX 2863  
HENDERSONVILLE, NC 28793

COOLEY, ARTHUR V  
145 BEN TREE DR  
HENDERSONVILLE, NC 28739

JOHNSON, PRESTON P; JOHNSON,  
JUDY; JOHNSON, KIRBY E; JOHNSON,  
SHERRI L  
PO BOX 901177  
HOMESTEAD, FL 33090

HICKORY REALTY FUND LLC  
337 SCHOONER LN  
CARBONDALE, CO 81623

STANSELL, HELEN AIKEN  
17 AIKEN PLACE RD  
HENDERSONVILLE, NC 28792

MOUNTAIN VIEW BAPTIST CHURCH  
650 DUNCAN HILL RD  
HENDERSONVILLE, NC 28792

BAUGH, DAVID STINE TRUSTEE  
PO BOX 711  
LANDRUM, SC 29356

NORTH MAIN STREET PROPERTIES OF  
HENDERSONVILLE, LLC  
P.O. BOX 1776  
HENDERSONVILLE, NC 28793

WREN, SKY LYN  
4949 RED HEART DR  
WILMINGTON, NC 28412

PESTY, SYLVIANE F.  
723 DUNCAN HILL RD  
HENDERSONVILLE, NC 28792

ESTRADA & SONS, LLC  
PO BOX 2706  
HENDERSONVILLE, NC 28793

RADIO HENDERSONVILLE INC  
1450 7TH AVE E  
HENDERSONVILLE, NC 28792

WORSHAM, CECIL AND WIFE  
PO BOX 888  
HENDERSONVILLE, NC 28793

GREEN HOLDINGS, LLC  
P.O. BOX 1776  
HENDERSONVILLE, NC 28793

MOUNTAIN VIEW BAPTIST CHURCH INC  
C/O 144 ATWOOD DR  
HENDERSONVILLE, NC 28792

HOLBERT, WILLARD VERNON  
PO BOX 126  
TIGERVILLE, SC 29688

LEDBETTER, SHARON S  
58 DENNY LN  
HENDERSONVILLE, NC 28792

WILKIE, KENNETH R; WILKIE, NINA  
W; WILKIE, DUSTIN RAY; WILKIE, JULIE O  
102 CHAPMAN DR  
HENDERSONVILLE, NC 28792

WILKIE, DUSTIN RAY; WILKIE, JULIE OWENS  
167 BREVARD KNOLL DR  
HENDERSONVILLE, NC 28792

601 DUNCAN HILL LLC  
601 DUNCAN HILL RD  
HENDERSONVILLE, NC 28792

HARVEY, HOWARD F AND WIFE  
707 DUNCAN HILL RD  
HENDERSONVILLE, NC 28792

VALENTINE, DONNA H TRUSTEE; DONNA H  
VALENTINE REVOCABLE TRUST  
AGREEMENT  
273 RANSIER DR  
LAUREL PARK, NC 28739

Bobby Funk  
4501 Atlantic Ave. #124  
Raleigh, NC 27604

North Main Street Properties LLC  
PO Box 1776  
Hendersonville, NC 28793

Ordinance # \_\_\_\_ - \_\_\_\_

**AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND THE OFFICIAL ZONING MAP OF THE CITY OF HENDERSONVILLE FOR PARCEL NUMBERS 9569957758, 9569955941 AND 9569964013 BY CHANGING THE ZONING DESIGNATION FROM R-20 LOW DENSITY RESIDENTIAL TO PRD PLANNED RESIDENTIAL DEVELOPMENT CONDITIONAL ZONING DISTRICT**

IN RE: Parcel Numbers:9569957758, 9569955941 and 9569964013- Duncan Terrace  
Conditional Zoning District  
(File # P20-48-CZD)

**WHEREAS**, the City is in receipt of a Conditional Rezoning application from Bobby Funk of Mills Construction, Green Holdings LLC and North Main Street Properties of Hendersonville, LLC. for the development of 7, 3 story multifamily structures and a community center on approximately 8.66 acres., and

**WHEREAS**, the Planning Board took up this application at its regular meeting on February 8<sup>th</sup>, 2021; voting 6-0 to recommend City Council adopt an ordinance amending the official zoning map of the City of Hendersonville, and

**WHEREAS**, City Council took up this application at its regular meeting on March 4<sup>th</sup> , 2021, and

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Hendersonville, North Carolina:

1. Pursuant to Article XI of the Zoning Ordinance of the City of Hendersonville, North Carolina, the Zoning Map is hereby amended by changing the zoning designation of the following:  
  
Parcel numbers 9569957758, 9569955941 and 9569964013 from R-20 Low Density Residential to PRD Planned Residential Development Conditional Zoning District
2. Development of the parcel shall occur in accordance with the final site plan requirements of Article VII of the Zoning Ordinance of the City of Hendersonville, North Carolina, and shall be subject to the site limitations and conditions stipulated on the list of uses and conditions.
3. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this 4th, day of March 2021.

Attest: Barbara G. Volk, Mayor, City of Hendersonville

Angela L. Reece, City Clerk

Approved as to form:

Angela S. Beeker, City Attorney





**IN RE: Duncan Terrace Conditional Zoning District (File # P20-48-CZD)**  
**List of Uses & Conditions**

**I. Stipulated Uses:**

**Only the following uses are authorized for the referenced development:**

- Residential dwellings, multi-family
- Accessory structures
- Parks
- Home Occupations
- Customary accessory uses

**II. Conditions:**

- 1. Shall Be Attached to the Conditional Rezoning and Satisfied Prior to Issuance of Final Site Plan Approval:**
1. The Duncan Hill Road entrance/exit will be realigned to match Baldwin Hill Ave.
  2. Consideration of making the lighting on site Dark Sky Complaint
  3. To save the three large trees along Duncan Hill Road that are adjacent to the brick residential home.
  4. Require the developer to replace each tree over 12 inches in diameter that is removed from the property; and that replacement trees be the same or their equivalent to existing trees in accordance with Article XV of the Zoning Ordinance. In addition, all replacement Broadleaf Canopy Trees shall be 2 ½ inch diameter at breast height (DBH) and all Ornamental Trees shall be 1 ½ inch diameter at breast height (DBH)

*With their signatures below, the undersigned applicant(s) and property owner(s) consent to and agree to the imposition of all conditions stated.*

**Bobby Funk**

Signature:\_\_\_\_\_

Printed Name:\_\_\_\_\_

Date:\_\_\_\_\_

**GREEN HOLDINGS, LLC**

Signature:\_\_\_\_\_

Printed Named:\_\_\_\_\_

Date:\_\_\_\_\_

Title within LLC:\_\_\_\_\_

**NORTH MAIN STREET PROPERTIES  
OF HENDERSONVILLE, LLC**

Signature:\_\_\_\_\_

Printed Named:\_\_\_\_\_

Date:\_\_\_\_\_

Title within LLC:\_\_\_\_\_

## Community Development Staff Report

**TO:** Honorable Mayor and City Council

**FROM:** Community Development Department- Planning Division

**RE:** Duncan Terrace Conditional Zoning District

**FILE #:** P20-48-CZD

**DATE:** March 4<sup>th</sup>, 2021

### PROJECT DESCRIPTION

The City is in receipt of a Conditional Rezoning application from Bobby Funk of Mills Construction, Green Holdings LLC and North Main Street Properties of Hendersonville, LLC. for the development of 7, 3 story multifamily structures and a community center on approximately 8.66 acres. The subject property is identified as parcel numbers 9569-95-7758, 9569-95-5941 and 9569-96-4013. One parcel currently contains a vacant single-family structure at 710 Duncan Hill Road. The applicant is requesting to rezone the subject property from R-20 Low Density Residential to PRD Planned Residential Development Conditional Zoning District. Photos of the existing conditions on the site are attached as Appendix G.

### NEIGHBORHOOD COMPATIBILITY

A neighborhood compatibility meeting concerning this application was held on January 15<sup>th</sup>, 2021. Notice was provided by U.S. mail to the owners of record of all property situated within 400 feet of the subject property as required by the Zoning Ordinance.

Several people representing the public attended the meeting virtually. A copy of the neighborhood compatibility report accompanies this memorandum as Appendix A.

### TREE BOARD

The Tree Board took this project up at its February 2<sup>nd</sup> meeting. The tree board raised concerns over the loss of trees on a primarily wooded lot. The discussed possible mitigation factors and they ultimately voted on the following motion.

“Motion by Glenn Lange to require the developer to save the three large trees along Duncan Hill Road that are adjacent to the brick residential home; and require the developer to replace each tree over 12 inches in diameter that is removed from the property; and that replacement trees be the same or their

equivalent to existing trees in accordance with Article XV of the Zoning Ordinance. In addition, all replacement Broadleaf Canopy Trees shall be 2 ½ inch diameter at breast height (DBH) and all Ornamental Trees shall be 1 ½ inch diameter at breast height (DBH). Vote – all ayes.”



## Planning Board

The Planning Board took this matter up at their regular meeting on February 8<sup>th</sup>, 2021. Planning Board members discussed various aspects of the project including the scoring for the low-income tax credits, site distances for the northern entrance along with recommendations that were made by staff and the Tree Board. The Planning Board voted 6-0 on the following motion.

“Mr. Hanley moved the Planning Board recommend that City Council adopt an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of the subject property from R-20, Low Density Residential to PRD CZD, Planned Residential Development Conditional Zoning District, based on the site plan submitted by the applicant and subject to the limitations and conditions stipulated on the Published List of Uses and Conditions, finding that the rezoning is consistent with the Comprehensive Plan’s Future Land Use map, and that the rezoning is reasonable and in the public interest for the following reasons: it is in the public’s interest and fills a great need in the county. He would also add the conditions:

1. Consideration of moving the access from Duncan Hill Road to align with Baldwin Hill Ave.
2. Consideration of making the lighting the Dark Sky Complaint.

Mr. Blatt stated he would second the motion as long as it is clear that the Dark Sky Initiative is not a mandate but a recommendation. Mr. Blatt seconded the motion which passed unanimously.”

## **Rezoning Request Analysis**

### **EXISTING LAND USE & ZONING**

The subject property is currently zoned R-20 low density residential. The property contains 1 vacant single family structure and is mostly wooded. A tree survey submitted by the applicant is attached as appendix F.

Parcels to the north are zoned R-20 low density residential. Parcels to the east are zoned C-3 Highway Business and RCT, Residential Commercial Transition. Parcels to the south are zoned R-20 and C-3 and contain various commercial uses such as Four Seasons Ford. Parcels to the west are zoned PCD, Planned Commercial Development, C-2 Secondary Business and R-20. Surrounding land uses and zoning districts are shown in Appendix B “Existing Land Use Map” and Appendix C “Existing Zoning Map”.

### **COMPREHENSIVE PLAN CONSISTENCY**

The subject property is classified as High Intensity Neighborhood on the 2030 Comprehensive Plan’s Future Land Use Map. The goal of the High Intensity Neighborhood classification is to “Encourage low-maintenance, high density housing that supports Neighborhood and Regional Activity Centers and downtown and provides a transition between commercial and single-family development. Promote walkable neighborhood design that creates attractive and functional roadway corridors and multi-family residential neighborhoods.”

The recommended primary and secondary land use in Urban Institutional are as follows:

#### Recommended Primary Land Uses:

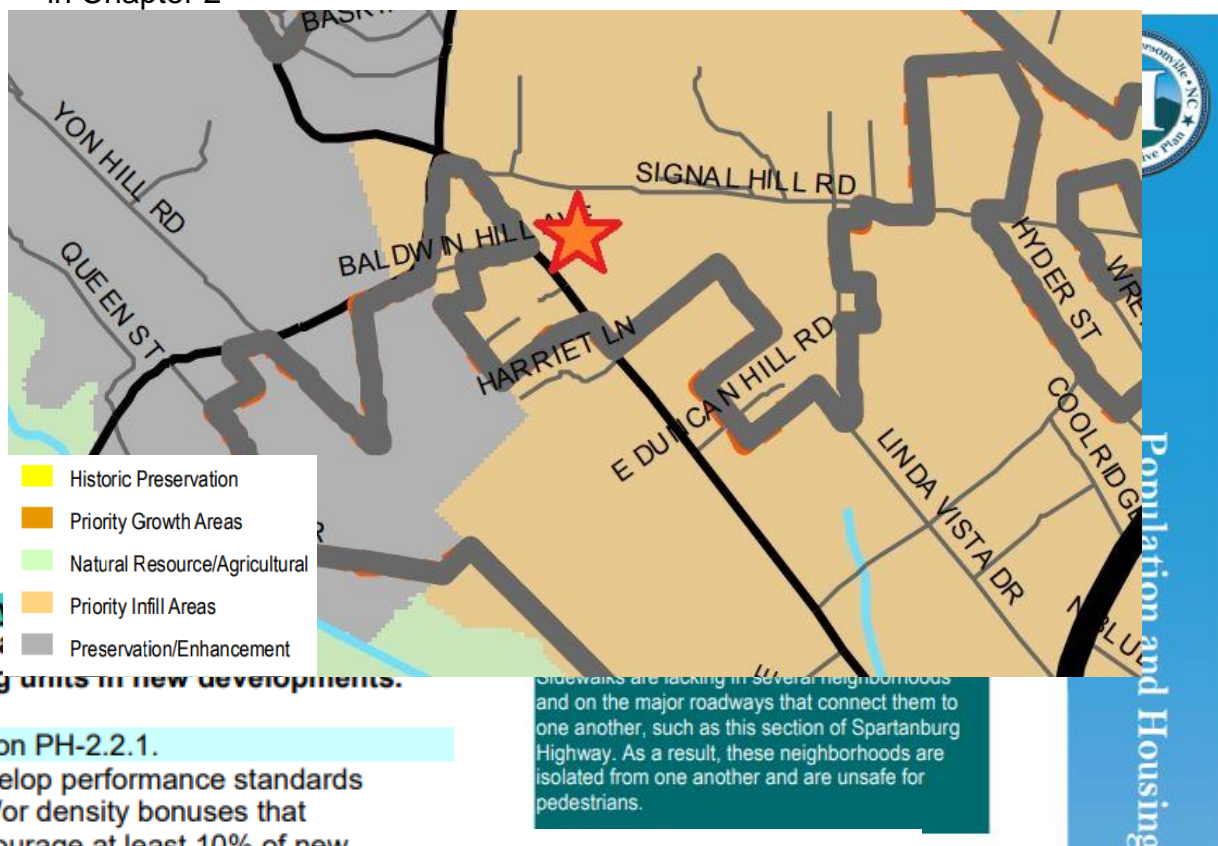
- **Single-family attached and multi-family residential**
- **Planned Residential Developments**
- **Open space**

#### Recommended Secondary Land Uses:

- Public and institutional uses
- Offices and retail along thoroughfares
- Recreational amenities

#### Development guidelines:

- Eight or more units per gross acre
- Placement of higher-intensity uses (e.g. office or higher-density residential) close to Boulevards and Major Thoroughfares, and/or adjacent to Neighborhood and Regional Activity Centers
- At least 60% open space in new residential developments greater than three acres
- Architectural guidelines to encourage compatibility between different land uses (e.g. similarities in building height, massing, roof pitch, and rhythm of windows and façade detailing)
- Encouragement of walkable neighborhood design, as described under Goal PH-3 in Chapter 2



**Strategy PH-2.1.**  
**Encourage a wide range of housing types and price points in order to meet the diverse and evolving needs of current and future residents, match the housing supply with the local workforce, and promote diverse neighborhoods.**

#### Action PH-2.2.1.

Develop performance standards and/or density bonuses that encourage at least 10% of new housing units sold in a new development to be affordable to people making up to 80% of the area median household income.

#### Action PH-2.2.2.

Support development proposals that mix subsidized housing with market-rate housing.

#### Goal PH-2.

**Encourage a wide range of housing types and price points in order to meet the diverse and evolving needs of current and future residents, match the housing supply with the local workforce, and promote diverse neighborhoods.**

#### Strategy NR-2.3.

**Promote preservation of woodlands.** Mature trees and wooded areas are significant community-defining natural features that contribute to Hendersonville's identity. Trees provide several additional community benefits, as described in Figure 3.3c.

#### **“Priority Infill**

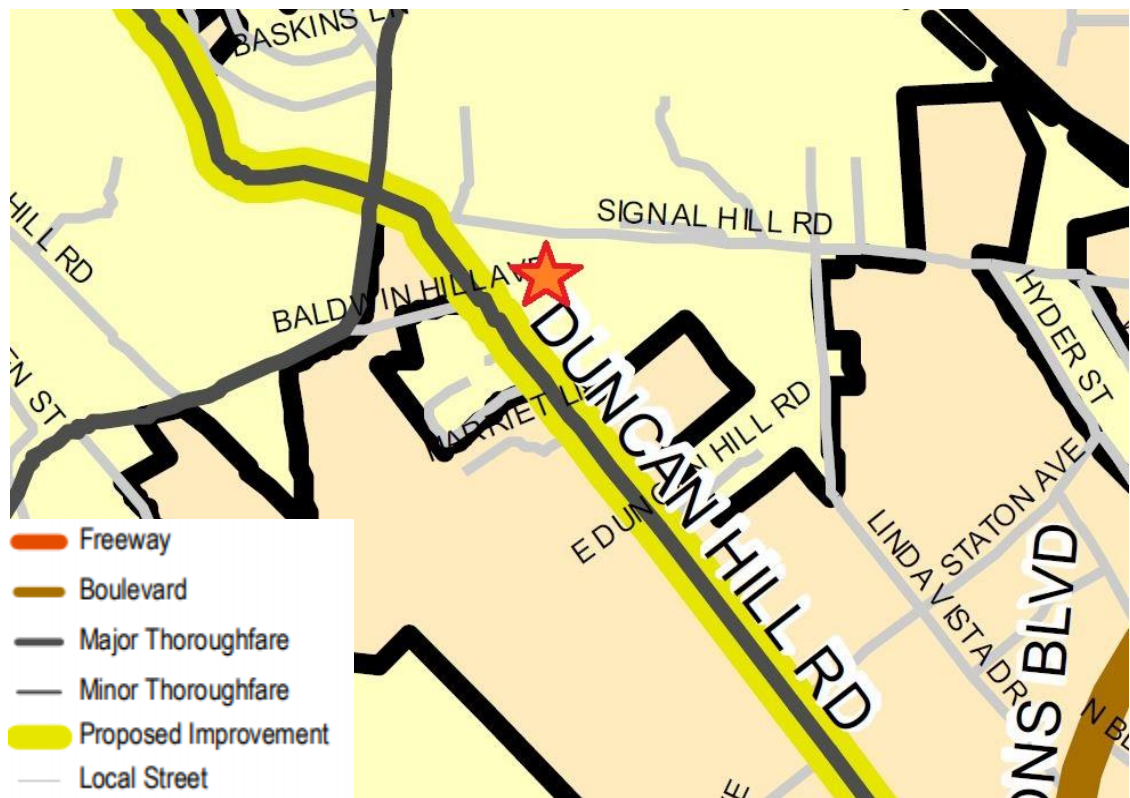
**Areas (beige):** Areas that are considered a high priority for the City to encourage infill

development on remaining vacant lots and redevelopment of underutilized or



underdeveloped properties”

The 2030 Comprehensive Plan’s Future Land Use Map designates parcels to the north



and east as High Intensity Neighborhood. Parcels to the south are classified as Regional Activity Center and High Intensity Neighborhood. Parcels to the West are classified as High Intensity Neighborhood.

The 2030 Comprehensive Plan’s Future Land Use Map is located in Appendix D.

### ZONING ORDINANCE GUIDELINES

Per Section 11-4 of the City’s Zoning Ordinance, the following factors shall be considered prior to adopting or disapproving an amendment to the City’s Official Zoning Map:

1. **Comprehensive Plan consistency.** Consistency with the Comprehensive Plan and amendments thereto.
2. **Compatibility with surrounding uses.** Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject property.
3. **Changed conditions.** Whether and the extent to which there are changed conditions, trends or facts that require an amendment.

4. **Public interest.** Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern that benefits the surrounding neighborhood, is in the public interest and promotes public health, safety and general welfare.
5. **Public facilities.** Whether and the extent to which adequate public facilities and services such as water supply, wastewater treatment, fire and police protection and transportation are available to support the proposed amendment.
6. **Effect on natural environment.** Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment including but not limited to water, air, noise, storm water management, streams, vegetation, wetlands, and wildlife.

#### **CHANGES TO THE PLAN BETWEEN PLANNING BOARD AND CITY COUNCIL**

Between the Planning Board meeting on February 8<sup>th</sup> and the City Council meeting, the developer revised his site plan. The original Site plan is appendix E in this staff report. As you will see, the developer realigned the Duncan Hill entrance/exit with Baldwin Hill Ave. This change was a recommended condition from Planning Board, a staff suggested condition and was endorsed by NCDOT.

#### **PLAN REVIEW:**

The site plan and proposed elevations are Appendix F.

#### **Buildings**

The site plan shows 7, 3-story, 12 unit multi-family buildings and 1 community center. The buildings total 40,977 square feet.

#### **Parking Requirements - Table 6-5-2**

The zoning ordinance requires Planned Residential Developments have a minimum of one-and-one-half spaces per residential unit containing one or two bedrooms and a minimum of two spaces per residential unit containing three or more bedrooms.

- 1 bedrooms- 15
  - 22.5 Spaces
- 2 bedrooms-48
  - 72 Spaces
- 3 Bedrooms- 21
  - 42 Spaces
- **137 spaces required.**
- **147 spaces provided.**

### **Traffic Impact Analysis - Section 6-18**

- It was determined that a Traffic Impact Analysis was not necessary for this project. According to the 7<sup>th</sup> edition volume 2 of the Institute of Transportation Engineers trip generation manual the project is not expected to meet either the 100 or more peak-hour trips or the 1,000 or more daily trips thresholds.
  - Apartment Classification-
    - 564.48 trips per day
    - 46.2 trips peak AM hour
    - 56.28 trips peak PM hour
  - Mid Rise Apartment Classification (between 3 and 10 levels)-
    - 29.4 Trips AM peak hour
    - 36.96 trips PM peak hour
    - No data for daily trips.

### **Entrance**

The development would have two points of ingress and egress, one off Signal Hill Road and one-off Duncan Hill Road. During discussions with the Development Review Committee, it was discussed that it would be better for development circulation if the project aligned the Duncan Hill entrance/exit with Baldwin Hill Ave. This suggestion was made on the site plan included in your packet.

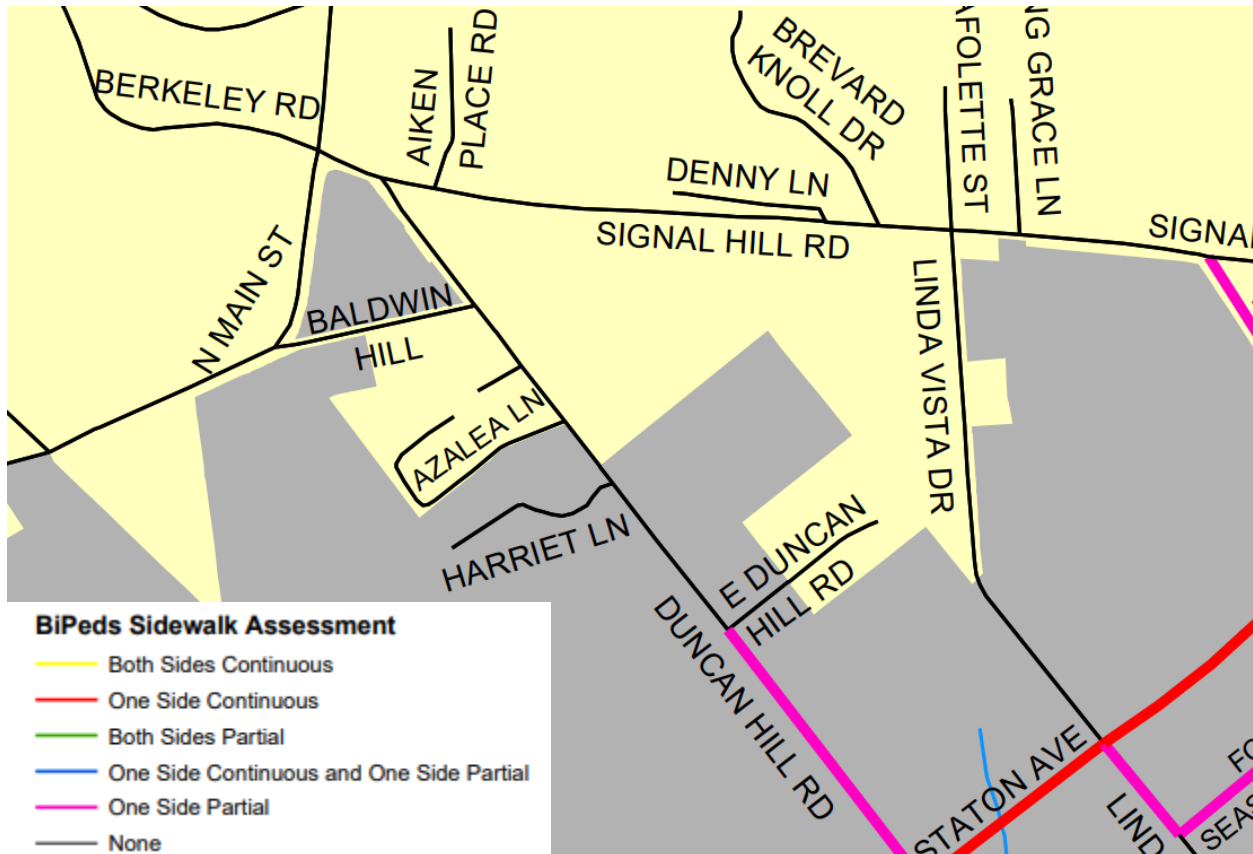
### **Stormwater/Flood Hazard Area**

Since land disturbance for this project exceeds one acre, a storm water management system is required. The stormwater plan will be reviewed by the City's Engineering Department.

### **Sidewalks - Section 6-12**



Sidewalks will be provided on the project frontages on Duncan Hill and Singla Hill Road. This area is currently not served by adequate pedestrian infrastructure.



**Landscaping:** The applicant will be required to provide vehicular use landscaping for this project. Vehicular use landscaping consists of 1 tree and 2 shrubs for every 4,000 square feet of VUA. No buffers will be required by ordinance since this project is residential.

**Zoning District Standards - Section 5-14 PRD Planned Residential Development**  
**Conditional Zoning District Classification**

- 5-14-4 Density
  - The density authorized for the district shall not exceed **ten units** per acre.
  - Proposed: **9.6 units** per acre
- 5-14-6.1 Open Space and Footprint Requirements.
  - Maximum building footprint =20%

- Proposed= 10.8%
- Minimum open space=60%
- Proposed=66.2%

### **NCDOT Future Plan Insights**

Upon staff conversations with NCDOT about whether the DOT would support the realignment of the Duncan Hill exit to Baldwin Hill Ave, DOT provided information about possible improvements to the Duncan Hill Signal Hill area in the coming years. They provided the plans that are shown as appendix H in your memo. These plans show a possible roundabout or peanutabout in the general area of the Duncan Hill Signal Hill intersection. Carl Ownbey from DOT advised that he was unsure if this was still a viable DOT project (not due to the multi-family project). He advised that this project was not currently funded and was not on the STIP (State Transportation Improvement Program). This means that this project would be at least 10 years out even if it receives funding.

### **Advisory Board Recommendations**

In this section City Council members can find recommended conditions from two of the City's Advisory Boards. There was no developer requested conditions for this project.

**Planning Board Recommended Rezoning Conditions:** These conditions are included in the attached suggested motion. They can be included or removed at Council's discretion and upon agreement by the parties involved.

The following (2) conditions are suggested for consideration to address guidance

included in the Comprehensive Plan and Zoning Ordinance.

- 1) Consideration of moving the access from Duncan Hill Road to align with Baldwin Hill Ave. **(met by the developer through a site plan redesign)**
- 2) Consideration of making the lighting on site Dark Sky Complaint **(see attachment)**

**Developer Proposed Conditions:** These conditions are included in the attached suggested motion. They can be included or removed at Council's discretion and upon agreement by the parties involved.

- 1) None

**Tree Board Proposed Conditions:** The following (2) conditions were recommended by Tree Board in a effort to mitigate the tree loss that will occur.

- 1) To save the three large trees along Duncan Hill Road that are adjacent to the brick residential home.
- 2) Require the developer to replace each tree over 12 inches in diameter that is removed from the property; and that replacement trees be the same or their equivalent to existing trees in accordance with Article XV of the Zoning Ordinance. In addition, all replacement Broadleaf Canopy Trees shall be 2 ½ inch diameter at breast height (DBH) and all Ornamental Trees shall be 1 ½ inch diameter at breast height (DBH)

## **Appendix A**

Planning Report

Neighborhood Compatibility Meeting  
Application for a Conditional Zoning District  
Duncan Terrace File # P20-48-CZD  
Friday, January 15, 2021 2:00 p.m.

Tyler Morrow, Planner, convened the compatibility meeting at 2:00 pm in the Council Chambers of City Hall. Approximately one person from the public and three City staff were in attendance. The follow attended:

<i><b>Name</b></i>	<i><b>Address</b></i>	<i><b>Name</b></i>	<i><b>Address</b></i>
Lurah Lowery	Times News		
Tyler Morrow	staff		
Lew Holloway	staff		
Allison Justus	staff		

Mr. Morrow opened the meeting explaining this is the first step in a three-step process. He explained the conditional rezoning process adding anyone who received notice of this meeting would receive notice of the City Council Public Hearing. Minutes of this meeting will be forwarded to Planning Board and City Council. Mr. Morrow said the project will go before the Planning Board in February and City Council will hear the project in March. Mr. Morrow stated this meeting is for the neighbors to learn about the project and they should focus on the compatibility of the project in the neighborhood. This is a virtual meeting and Mr. Morrow explained the process and the steps to participate in the meeting. This is an informal meeting so state your name and address before making any comments as minutes of this meeting are being taken.

Mr. Morrow stated the property is currently zoned R-20, Low Density Residential and the proposed zoning is PRD CZD, Planned Residential Development Conditional Zoning District. This project is for seven 12- unit apartment buildings with three stories on approximately 8.66 acres with a community center. They will be limited to what is shown on the plan. Minutes will be sent to the Planning Board and City Council from this meeting. Bobby Funk with Mills Construction is on call via Zoom.

Bobby Funk, Development Coordinator with Mills Construction stated they are a housing development company based out of Raleigh, N.C. They are partnering with a local non-profit in Hendersonville, Western N.C. Housing Partnership. Several people with his team were on the call.

Mr. Funk went through the site plan explaining this is 84-unit multi-family housing community. They have taken great care to make sure they fit into the neighborhood. He explained that Mills Construction has been in business for 51 or 52 years. The closest development they have in this area is in Arden, NC. He stated Western NC Housing Partnership was formed 25 years ago. This is will be high quality apartments for workforce housing.

Joy Strassel introduced herself. She is the Executive Director of Western NC Housing Partnership. She has lived in Hendersonville for 16 years. The need for housing is great and she is excited to be working with Mills Construction.

Mr. Funk gave an overview of the project. The development will include seven three-story, 12-unit apartment buildings on 8.6 acres. There will be 15 one-bedroom apartments, 48 two-bedroom apartments and 21 three-bedroom apartments. Photos and site plans were shown. They will also have

CITY COUNCIL  
DUNCAN TERRACE  
MARCH 4<sup>TH</sup>, 2021  
PAGE 12

a gazebo, playgrounds and a community center that will house an office, laundry facility and a computer lab. All areas of the development will be compliant with the ADA.

Mr. Funk stated the apartments will be income restricted and applicants will have to qualify to live there if their income is within a certain range. Rent will also be income based.

Mr. Morrow stated they will hear the live comments. He explained the raise hand feature and asked each person to state their name and address for the record.

Ken Fitch, 1046 Patton Street had concerns about the development and the traffic impact this size development would create. Mr. Funk stated the apartment residents are expected to have little impact on the traffic flow.

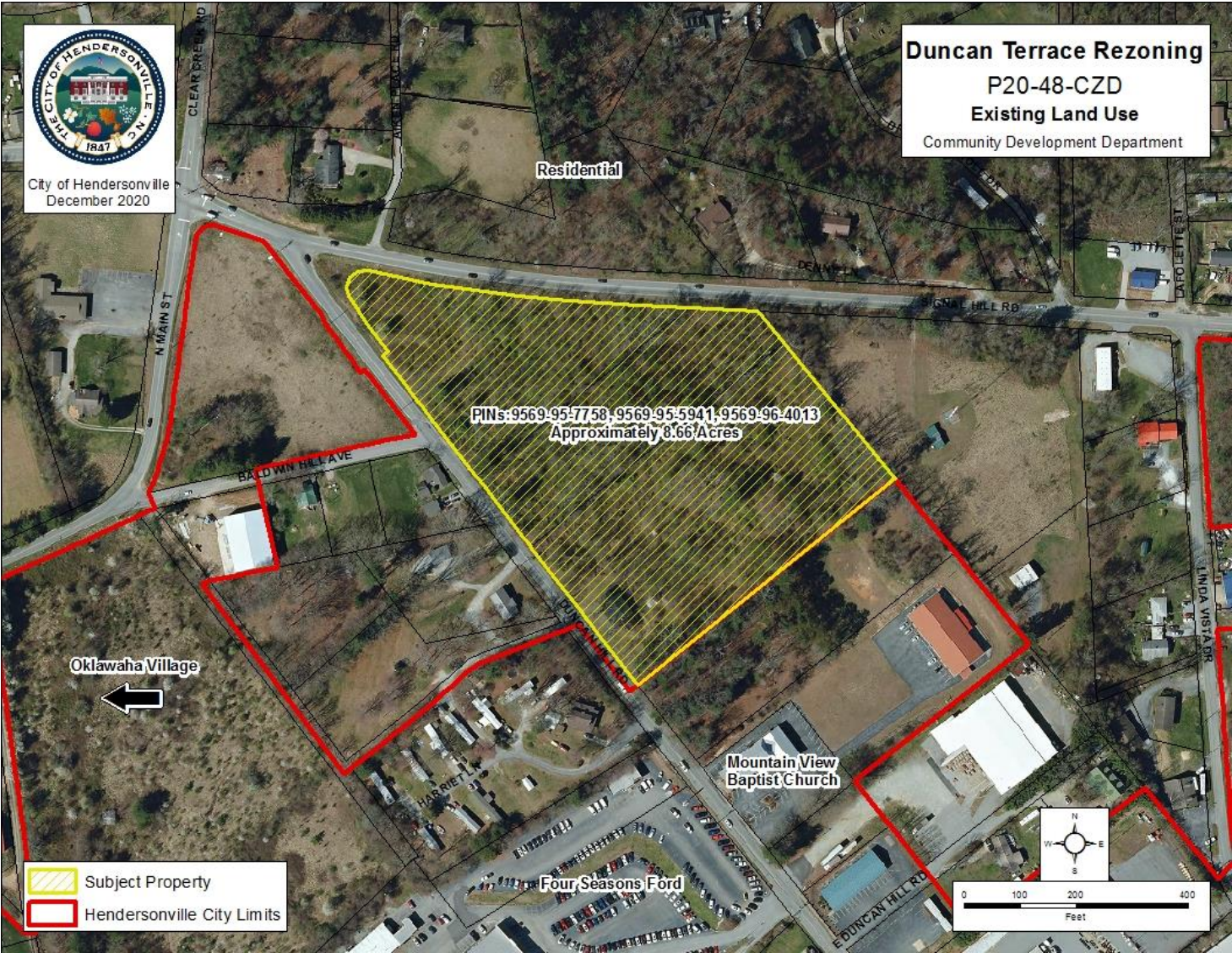
Mr. Morrow asked if anyone else would like to comment. No other comments were made.

Mr. Morrow stated this concludes the meeting. He stated the next step for this project is the Planning Board and everyone that got noticed will be noticed of the Planning Board meeting as well. The property will also be posted with the meeting information on the sign.

With no further comments or questions, Mr. Morrow closed the meeting at 2:30 pm.



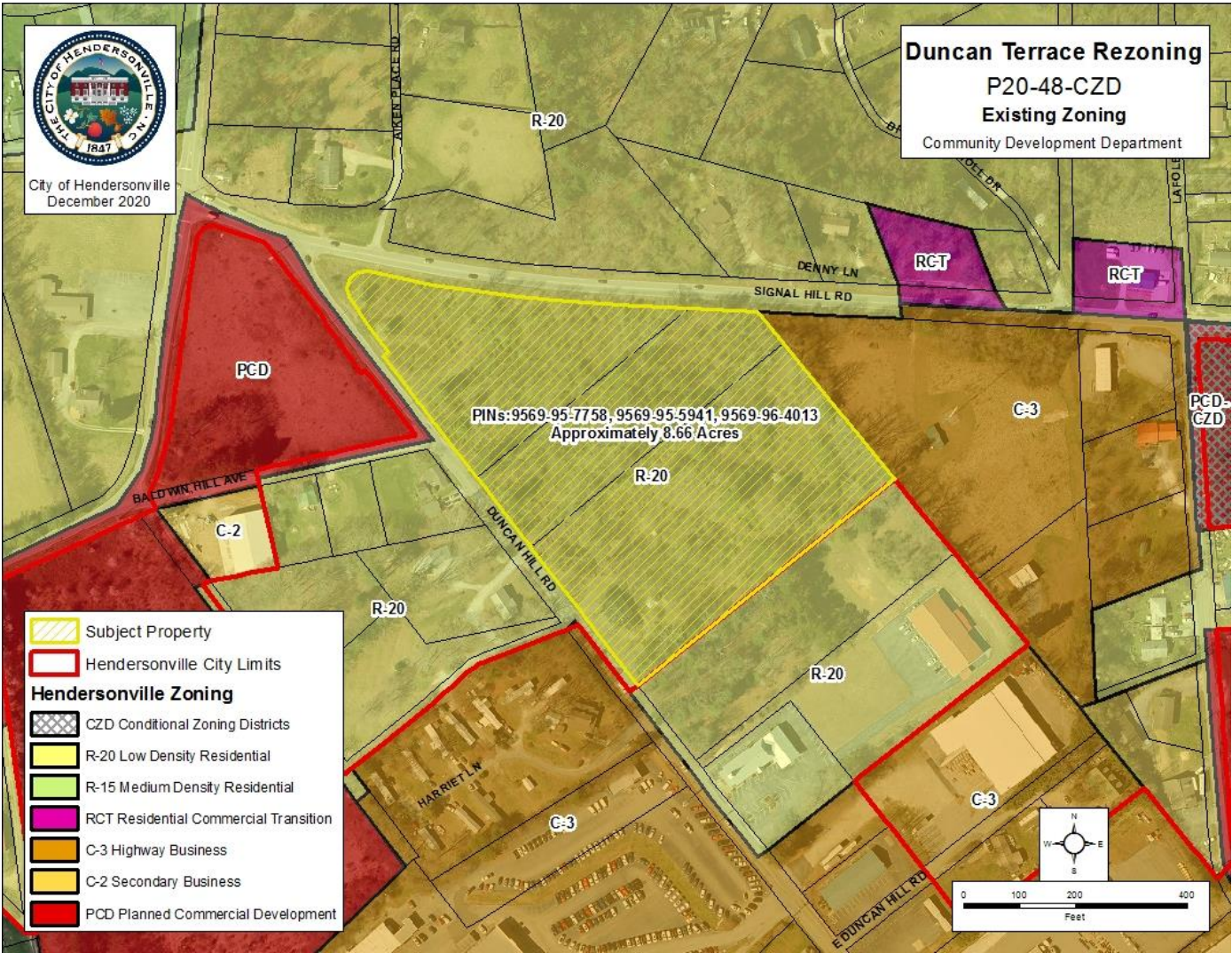
Appendix B





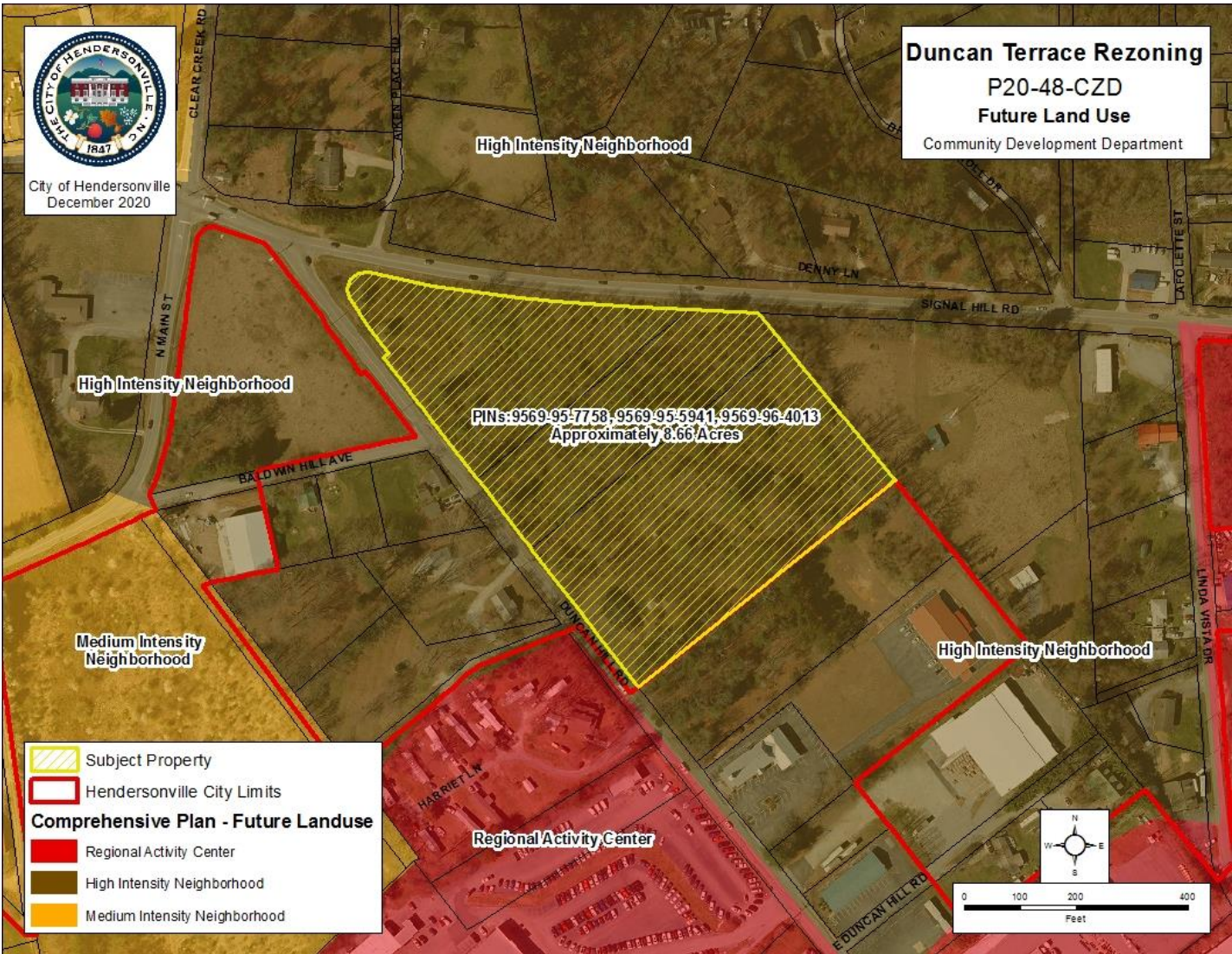
CITY COUNCIL  
DUNCAN TERRACE  
MARCH 4<sup>TH</sup>, 2021  
PAGE 14

**Appendix C**





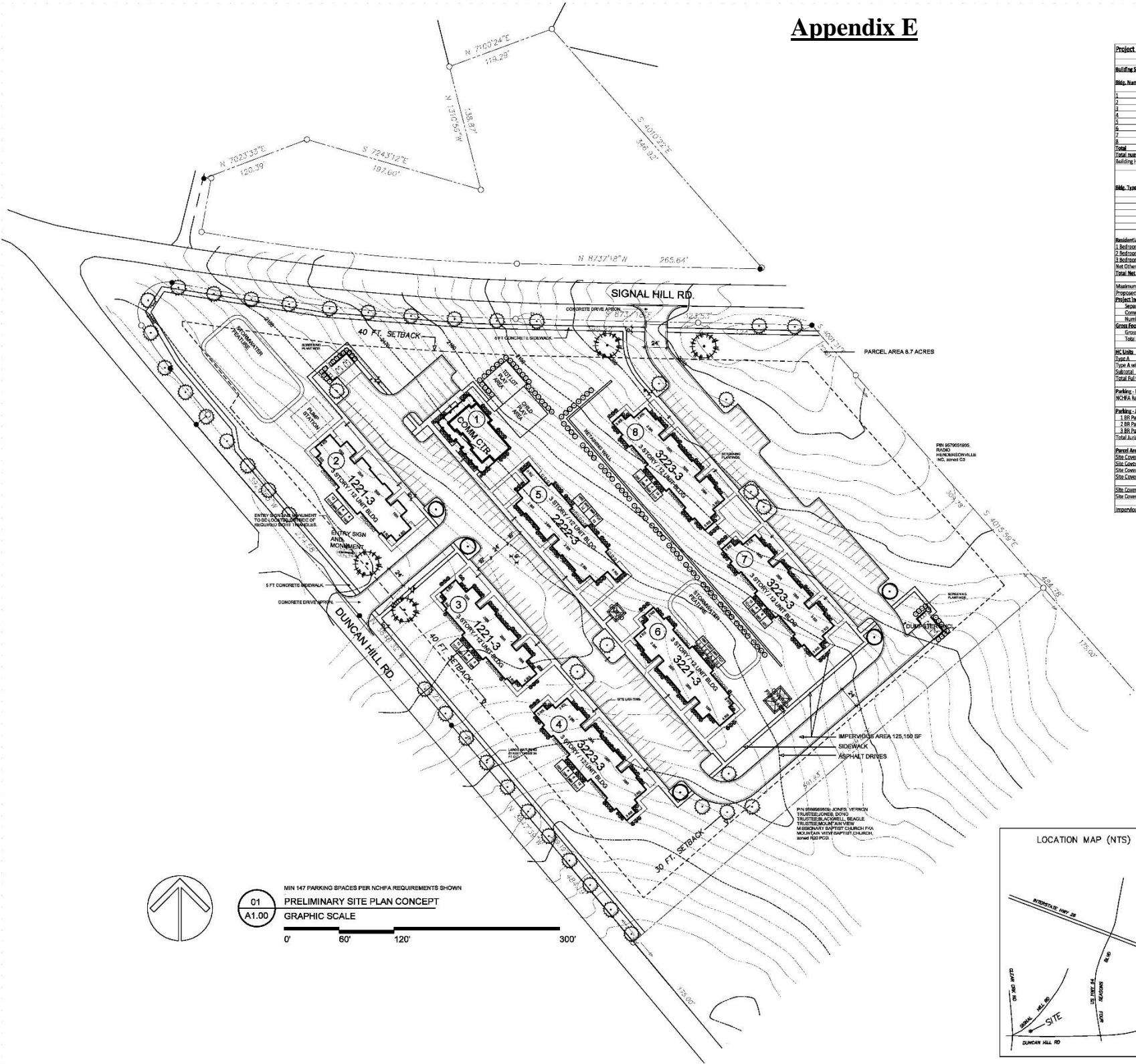
Appendix D





CITY COUNCIL  
DUNCAN TERRACE  
MARCH 4<sup>TH</sup>, 2021  
PAGE 16

Appendix E

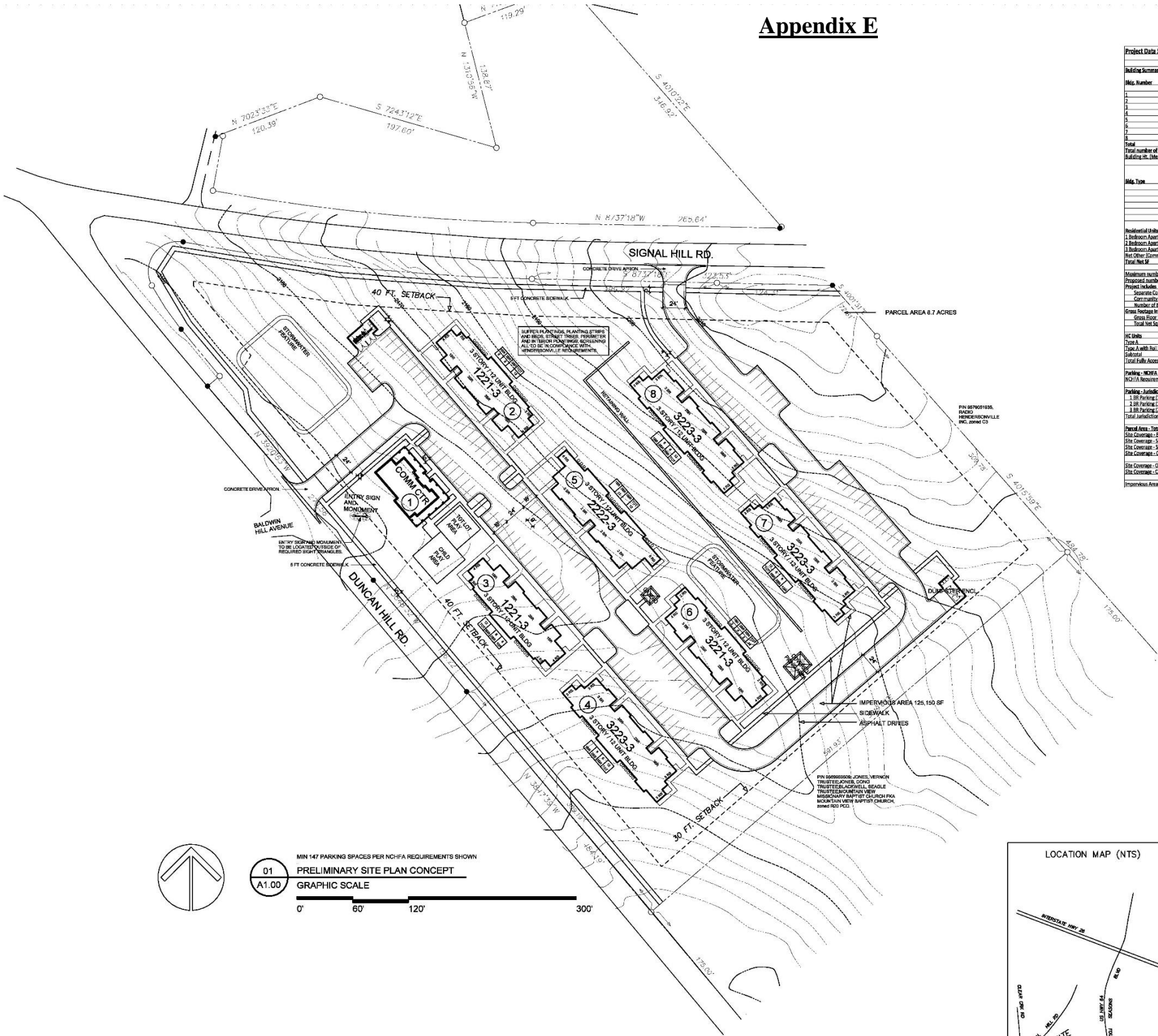


Project Data Summary		Duncan Terrace						
1/15/2021								
Building Summary								
Building Number	Building Type	1 BR	2 BR	3 BR		Gross	Net	Gross to Net
1	Comm. Ctr.					3,137	2,692	8.66
2	3221-3	6	6			13,088	11,718	8.50
3	3221-3	6	6			13,088	11,718	8.80
4	3221-3	6	6			15,595	14,738	8.61
5	3221-3	6	6			15,514	14,626	8.68
6	3221-3	6	6			14,842	14,678	8.90
7	3221-3	6	6			15,595	14,738	8.61
8	3221-3	6	6			15,595	14,738	8.61
Total number of residential units		34	18	48	21	306,278	26,644	8.89
Building Ht. (Mean Roof Height - Residential Buildings)		37	Feet					
						57%	25%	
Building Type		Gross SF / Net Floor	Gross SF / Upper Floor			Gross / Net		
3221-3		4,613	4,237			13,088		
3221-3		5,254	5,010			15,514		
3221-3		5,028	4,637			14,842		
3221-3		5,441	5,077			15,595		
Community Center		3,137	0			3,137	2,692	8.66
Residential Units SF								
	Net	# Units	Net Total	Heated				Heated Total
1 Bedroom Apartment Unit	851	15	12,765	806				12,803
2 Bedroom Apartment Unit	1,102	48	52,896	1,093				52,944
3 Bedroom Apartment Unit	1,271	21	26,621	1,213				26,870
Net Other (Community Building)				2,092				2,092
Total Net SF			84	94,444				94,538
Maximum number of stories in building								
3								
Proposed number of residential buildings								
7								
Project Includes								
Separate Community Building								
Community space within residential buildings								
Number of Elevators								
0								
SF (Floor Area)								
SF (Floor Area)								
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CITY COUNCIL  
DUNCAN TERRACE  
MARCH 4<sup>TH</sup>, 2021  
PAGE 17

Appendix E



Project Data Summary		Duncan Terrace					
		2/19/2021					
Building Summary							
Unit Number	Unit Type	1 BR	2 BR	3 BR	Gross	Net	Net to Gross
1	Comm. Ctr.				3,157	2,092	0.66
2	1221-3	6	6		13,089	11,738	0.90
3	1221-3	6	6		13,089	11,738	0.90
4	3223-3	6	6	6	15,595	14,238	0.91
5	1221-3	12	12		15,514	13,214	0.85
6	3223-3	3	6	3	14,542	12,878	0.90
7	3223-3	6	6		15,595	14,238	0.91
8	3223-3	6	6		15,595	14,238	0.91
Total		15	48	21	105,776	94,444	0.89
Total number of residential units							
Building Ht. (Mean Roof Height - Residential Buildings)							
		37	100	57%	23%		
Unit Type							
		Gross SF /		Gross SF /	Gross SF /		
		Net Total		Upper	Net Total		
		Floor Area		Level	Floor Area		
1221-3		4,615		4,237	13,089		
1221-3		5,294		5,000	15,514		
1221-3		5,038		4,637	14,542		
3223-3		5,441		5,077	15,595		
Community Center		3,157		0	3,157		2,092 0.66
Residential Units							
		Net	# Units	Net Total	Heated	Heated	Heated
1 Bedroom Apartment Unit		851	15	12,855	806	12,890	12,890
2 Bedroom Apartment Unit		1,022	48	12,890	1,051	10,544	10,544
3 Bedroom Apartment Unit		1,271	21	25,651	1,213	25,613	25,613
Net Other Community Building					2,092	2,092	2,092
Total Net SF			84	55,444			50,136
Maximum number of stories in building							
Proposed number of residential buildings		3					
Project includes							
Separate Community Building		2,092					
Community space within residential buildings							
Number of Elevators		0					
Gross Footprint Information							
Gross Floor Space Footprint		105,776					
Total Net Sq. Ft. (All Heated Areas)		54,444					
HC Units							
1 BR		1 BR	2 BR	3 BR			
Type A		1	2	2		6.0%	
Type A with Bat in Shower		1	2	2		6.0%	
Subtotal		2	4	4	10	11.9% of total units	
Parking - NCMA							
NCMA Requirement (Family 1.75 spaces per unit)					Spaces	Overrides	
Parking - Jurisdiction Requirement					247		
1 BR Parking (1.5 per)					78		
2 BR Parking (2.5 per)					72		
3 BR Parking (3.0 per)					42		
Total Jurisdiction Parking Requirement					192		
Parcel Area - Total Project Area		6.7 Acres			378,472 SF		
Site Coverage - Building (including plastic shelter and gas)		40,977		10.8%			
Site Coverage - Sidewalks		16,966		4.9%			
Site Coverage - Streets and Parking		45,354		17.0%			
Site Coverage - Other Facilities (Play Areas)		2,756		0.7%			
Site Coverage - Open Space		125,033		33.0%			
Site Coverage - Common Open Space		233,838		67.0%			
Impervious Area		122,777		32.3%			

Title of Project:	Duncan Terrace		
Date:	2/5/2021		
Project Designer:	Wayne Jones, Registered Architect		
Proposed Developer:	Duncan Terrace, LLC		
Property Owner:	NORTH MAIN STREET PROPERTIES OF HENDERSONVILLE, LLC	Current Zoning:	Proposed Zoning:
PIN 555964413		R2D PCO	PRD-CZ
PIN 555966041	NORTH MAIN STREET PROPERTIES OF HENDERSONVILLE, LLC	R2D PCO	PRD-CZ
PIN 555967758	GREEN HOLDINGS, LLC	R2D PCO	PRD-CZ
Adjacent Properties:			
PIN 557001808	RADIO HENDERSONVILLE, INC. (to North)		C3
PIN 555966609	JONES, VERNON TRUSTEE; JONES, DONO TRUSTEE; BLACKWELL, SEAGLE TRUSTEE; MOUNTAIN VIEW MISSIONARY BAPTIST CHURCH; MOUNTAIN VIEW BAPTIST CHURCH (to Southeast)		R2D PCO
Notes:	The property is to be annexed by the City of Hendersonville, NC. Project signage will not be within the sight triangle for any road. All dwellings and their accessory structures shall be set back not less than 40 feet from the nearest right-of-way line for any street or railroad adjoining the site, provided, however, such setback may be reduced to ten feet when parking is situated to the side or rear of the lot and screened from view from public rights-of-way. Furthermore, such buildings and structures shall be set back not less than 30 feet from any exterior property line which is not a right-of-way. No trees are planted within the DOT ROW without an encroachment agreement.		

Jones Architecture, PLLC  
1000 South Main Street  
Raleigh, NC 27607  
Tel (919) 302-0404

JA



DUNCAN TERRACE  
HENDERSONVILLE  
NORTH CAROLINA  
84 RESIDENTIAL UNITS

THESE DRAWINGS ARE THE  
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JONES ARCHITECTURE, PLLC  
AND MAY NOT BE REPRODUCED  
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ALL RIGHTS RESERVED.

JA JOB# 2001 08  
DATE: 02-19-2021  
FILE:  
REV:  
REV:

POST- NCMA PREL. APPL.  
NOT FOR CONSTRUCTION

ARCHITECTURAL  
SITE PLAN

A1.00

NOTE THAT ANY AIR/1 NCMA ACCESSIBILITY COUNT FOR RESIDENTIAL UNITS  
DISTRIBUTION WITHIN PROJECT, BY UNIT CLASS, ETC. ACCESSIBLE ROUTES,  
AND ADA, ETC. REQUIREMENTS ARE NOT ILLUSTRATED ON THIS PLAN. FINAL  
CONSTRUCTION DOCUMENTS WILL BE PREPARED TO BE IN COMPLIANCE WITH  
THOSE REQUIREMENTS.

NOTE THAT THIS IS A PRELIMINARY SITE PLAN, AND IS AN APPROXIMATION OF  
EXISTING CONDITIONS BASED ON LIMITED INFORMATION.  
THE PROPERTY BOUNDARY, AND OTHER EXISTING SITE INFORMATION,  
MAY HAVE BEEN APPROXIMATED FROM GIS OR SKETCH INFORMATION  
PROVIDED BY OTHERS. THE ACCURACY OF WHICH IS UNKNOWN. THIS  
DOCUMENT IS NOT INTENDED FOR THE CONVEYANCE OF PROPERTY  
RIGHTS.

THIS IS A PRELIMINARY PLAN TO ILLUSTRATE A DESIGN CONCEPT ONLY.  
EXISTING BOUNDARY, RIGHTS OF WAY, EASEMENTS, ZONING CONDITIONS,  
SETBACKS, PARKING REQUIREMENTS, STORMWATER REQUIREMENTS,  
UTILITY ACCESS, SEWER ACCESS, WETLANDS, RETAINING WALLS,  
EXTENT AND COST OF GRADING, ROAD DESIGN, AND OTHER FACTORS  
AFFECTING THIS PROJECT MUST BE VERIFIED BY OTHERS.



CITY COUNCIL  
DUNCAN TERRACE  
MARCH 4<sup>TH</sup>, 2021  
PAGE 18



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Raleigh, NC 27607  
Tel (919) 302-0404



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HENDERSONVILLE  
NORTH CAROLINA  
84 RESIDENTIAL UNITS

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ALL RIGHTS RESERVED.

JA JOB#: 2001 08  
DATE: 12-25-2020  
FILE:  
REV:  
REV:

NCHFA PREL. APPLICATION  
NOT FOR CONSTRUCTION  
BUILDING ELEVATIONS

A5.02



CITY COUNCIL  
DUNCAN TERRACE  
MARCH 4<sup>TH</sup>, 2021  
PAGE 19



Jones Architecture, PLLC  
51806  
RALEIGH, NC 27607  
Tel (919) 302-0404



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NORTH CAROLINA  
84 RESIDENTIAL UNITS

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JA JOB#: 2001 08  
DATE: 12-25-2020  
FILE:  
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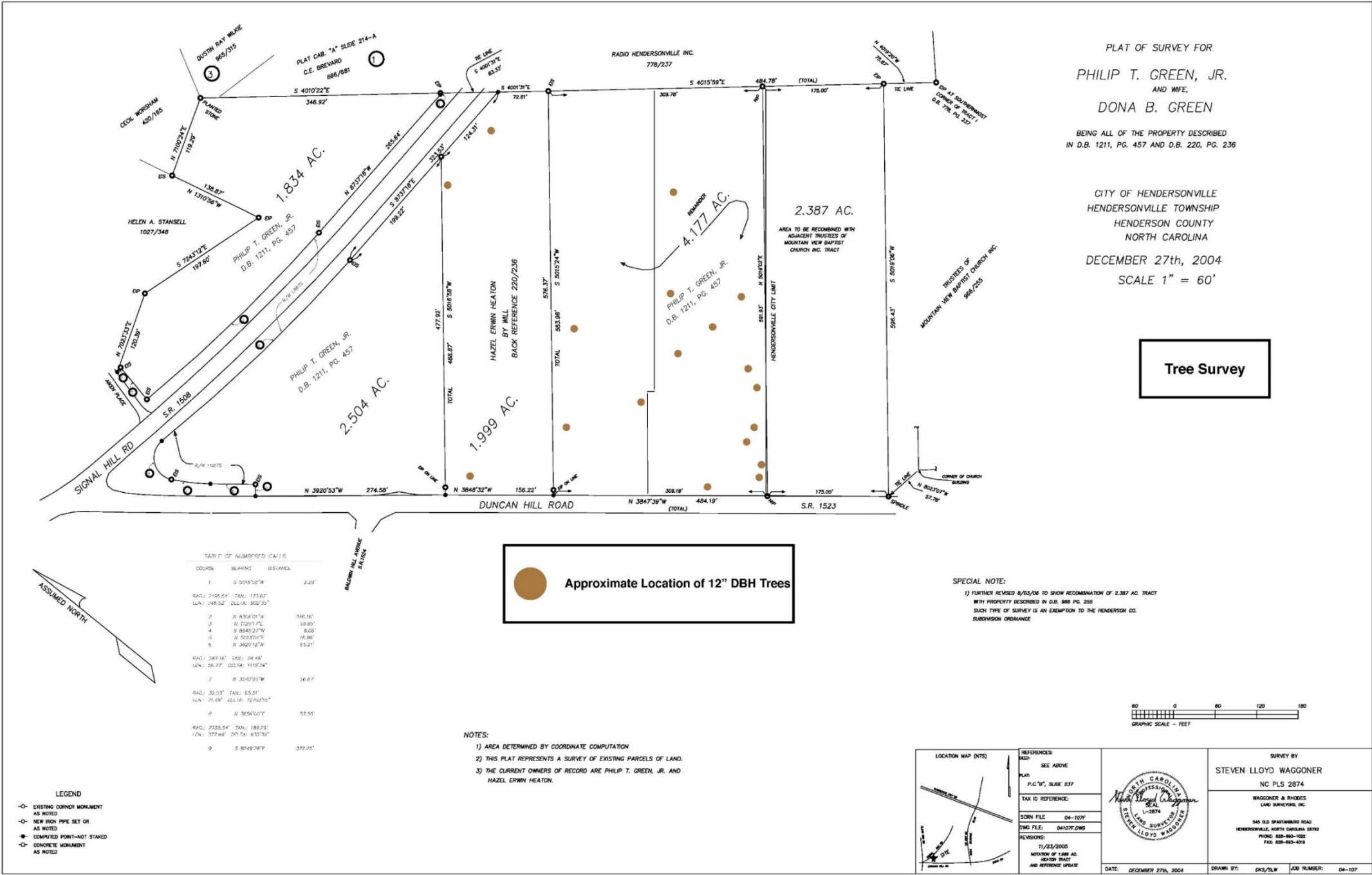
NCHFA PREL. APPLICATION  
NOT FOR CONSTRUCTION

BUILDING ELEVATIONS

A5.03

CITY COUNCIL  
DUNCAN TERRACE  
MARCH 4<sup>TH</sup>, 2021  
PAGE 20

Appendix F





**Appendix G**









CITY COUNCIL  
DUNCAN TERRACE  
MARCH 4<sup>TH</sup>, 2021  
PAGE 23

Appendix H

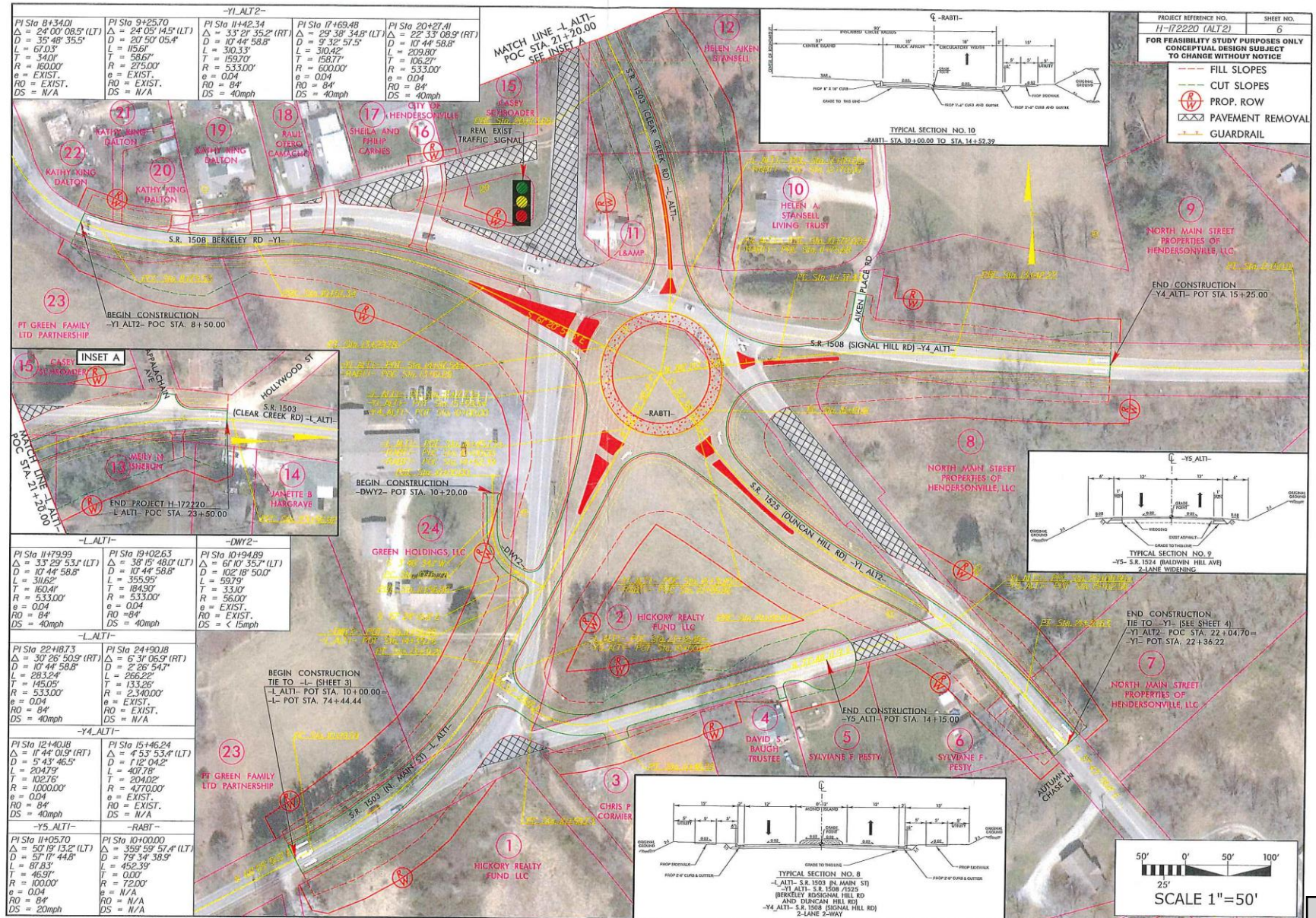
SHEET 1

2018





CITY COUNCIL  
DUNCAN TERRACE  
MARCH 4<sup>TH</sup>, 2021  
PAGE 24



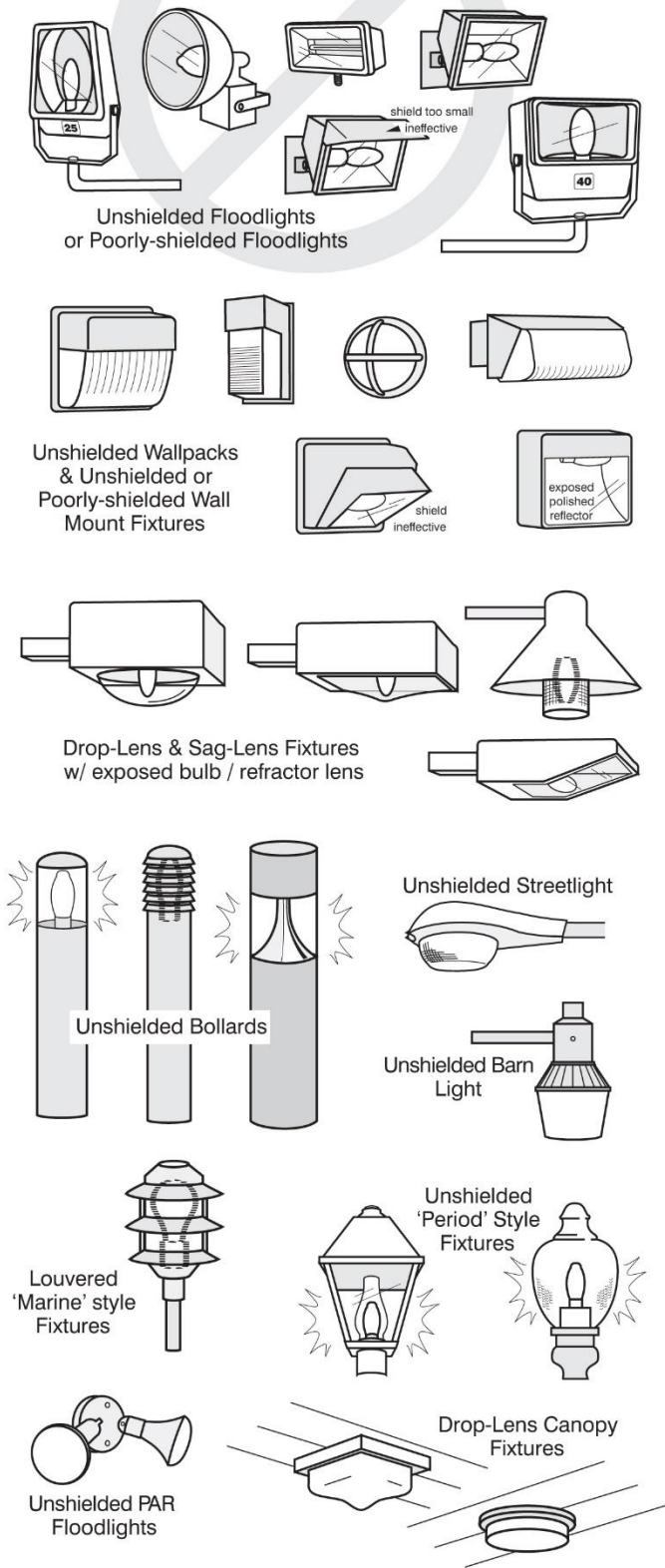


Suggested Lighting from the International Dark Sky Association:  
<https://www.darksky.org/our-work/lighting/lighting-for-citizens/lighting-basics/>

# Examples of Acceptable / Unacceptable Lighting Fixtures

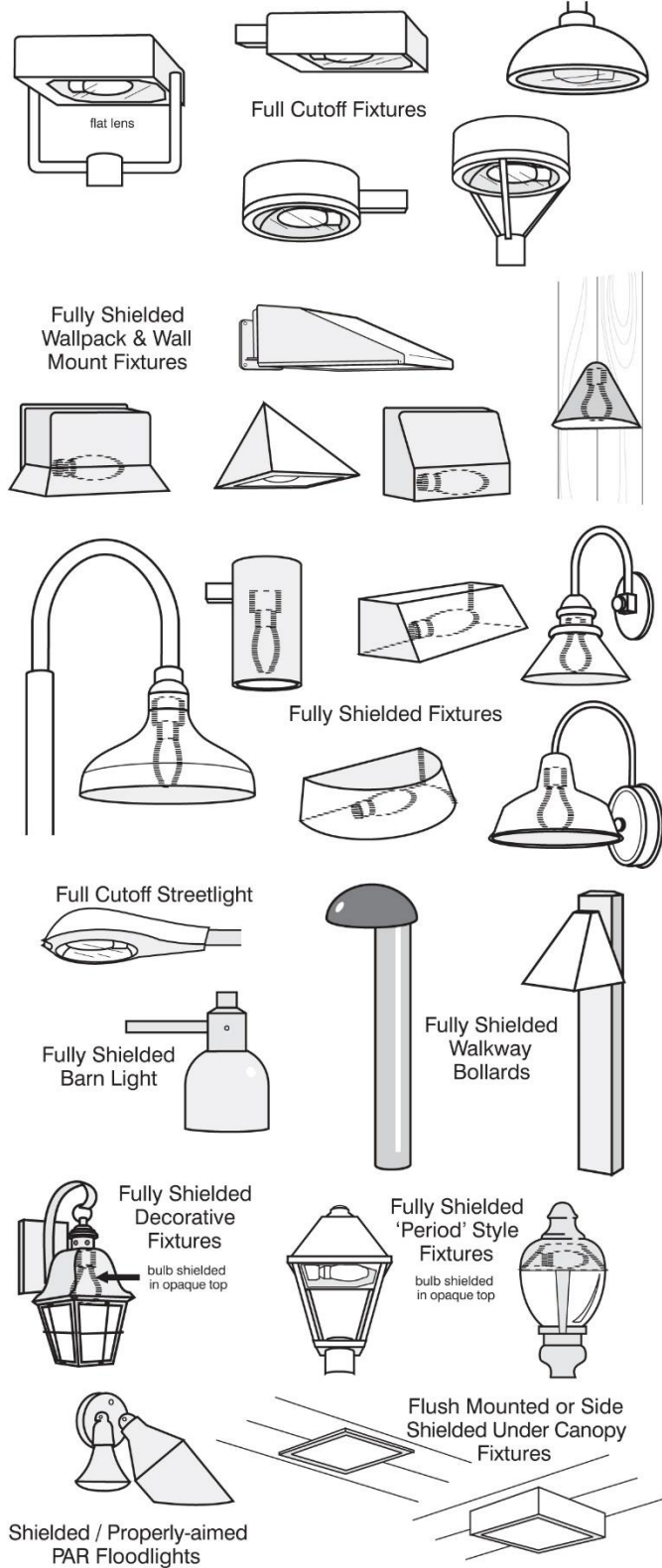
## Unacceptable / Discouraged

Fixtures that produce glare and light trespass



## Acceptable

Fixtures that shield the light source to minimize glare and light trespass and to facilitate better vision at night







CITY OF HENDERSONVILLE  
DEVELOPMENT ASSISTANCE DEPARTMENT  
100 N. King St. ~ Hendersonville, NC ~ 28792  
Phone (828)697-3010 ~ Fax (828)697-6185  
www.hendersonvillenc.gov

**Conditional Zoning District Petition**  
**Section 7-4 and Article 11 City Zoning Ordinance**

The following are required for conditional zoning district petition:

- ~ These forms including the property owner(s) signature(s)
- ~ Proposed conditions and Comprehensive Plan explanation (page 2)
- ~ Appropriate fee
- ~ A conceptual plan meeting the requirements in Section 7-4-3.1 of the City Zoning Ordinance.

After the neighborhood compatibility meeting, a final site plan meeting the requirements of Section 7-3-4.3 is required. Upon receipt of a complete application, a Planning Board meeting may be scheduled at least 24 days in the future.

Date 12/1/2020

Name of Project Duncan Terrace

Address / Location of Property approx. 710 Duncan Hill Rd., Hendersonville

List 10 digit PIN or 7 digit PID Number for each property

- 9569957758  
- 9569955941  
- 9569964013

CHECK TYPE OF DEVELOPMENT

☒ Residential

☐ Commercial

☐ Other

Current Zoning R-20

Proposed Zoning Planned Residential Development Conditional Zoning

List requested uses Residential dwellings, multi-family

Total Acreage 8.66

Proposed Building Sq.Ft. 106,000

Dwelling Units 84

Official Use:

DATE RECEIVED: \_\_\_\_\_ BY \_\_\_\_\_ FEE RECEIVED \$ \_\_\_\_\_ FILE NO. \_\_\_\_\_



## DEVELOPMENT ASSISTANCE DEPARTMENT

100 N. King St. ~ Hendersonville, NC ~ 28792

Phone (828) 697-3010 ~ Fax (828) 697-6185

www.hendersonvillenc.gov

### CONDITIONAL ZONING DISTRICT PETITION

(Continued)

#### Section 7-4 and Article 11 City Zoning Ordinance

Proposed Conditions for the site:

n/a

It is important that the applicant consider the following factors. See Section 11-4 of the Zoning Ordinance for more information. Please use additional pages and/or attachments if necessary:

Explain consistency with City's Comprehensive Plan:

This development is consistent with Hendersonville's Comprehensive Plan on numerous levels. It meets the Population and Housing goal of encouraging a wide range of housing types and price points to meet the needs of current and future residents by providing high quality safe and decent affordable housing. The development is located in an area identified as a high intensity neighborhood suitable for a primary use of multi-family residential development. This development also helps achieve the goal of promoting the orderly development and annexation of Hendersonville's extra-territorial jurisdiction. This site was also noted as a development opportunity in the land use chapter of the Comprehensive Plan.

Explain compatibility with surrounding land uses:

The development site has nearby land uses including commercial, single family, and multi-family housing. The property is conveniently located in close proximity to the commercial corridor along Four Seasons Blvd. with shopping and services amenities as well as convenient access to transportation corridors for commuting. The proposed development is complimentary to similar nearby new multifamily developments located on appropriate sites with access to sufficient public utilities. The property directly west of the site along Duncan Hill Rd is Mountain View Missionary Baptist Church, and the property to the west along Signal Hill Rd is home to the broadcasting antenna for the WHKP radio station. There are no known conflicting land uses which would make multifamily development inappropriate on this site.

Explain whether changed conditions require a map amendment:

Yes, the proposed development would not be permitted under the current zoning designation.

Explain how the petition is in the public interest:

The current Comprehensive Plan identified housing affordability noting that there was an inadequate supply of safe/decent affordable housing (Comp Plan Chapter 2). This development will serve the public interest by expanding housing availability at rents affordable to the community's workforce, which may reduce commute times and increase economic opportunities as the workforce will have increased housing opportunities where they currently live and work without being cost burdened.

Official Use:

FILE NO. \_\_\_\_\_



## DEVELOPMENT ASSISTANCE DEPARTMENT

100 N. King St. ~ Hendersonville, NC ~ 28792

Phone (828) 697-3010 ~ Fax (828)697-6185

www.hendersonvillenc.gov

### CONDITIONAL ZONING DISTRICT PETITION

(Continued)

#### Section 7-4 and Article 11 City Zoning Ordinance

**Explain whether adequate public facilities are available:**

The property is accessible from two public streets, Duncan Hill Rd and Signal Hill Rd. Water service is available at the property at Signal Hill Rd, and sewer service available at the eastern edge of the property on Duncan Hill Rd.

**Explain the impact the petition would have on the natural environment:**

The development will not have negative impacts on the natural environment. The site contains no identified streams, wetlands or protected wildlife. Before construction commences a complete environmental review of the property will be conducted. Stormwater management systems will be engineered and constructed to adequately detain 2 and 10 year storms in accordance to local stormwater management requirements.

**Additional information:**

Note additional approvals prior to issuance of a Zoning Compliance Permit may include, but are not limited to:

1. Henderson County Sedimentation & Erosion Control permit
2. Stormwater management plan
3. Utility approval
4. NCDOT permit
5. Any other applicable permits as determined by Development Assistance Department

Official Use:

**FILE NO.** \_\_\_\_\_

Designated Agent	Bobby Funk
------------------	------------

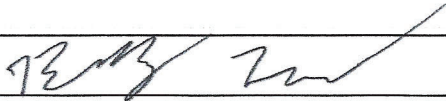
Address	4501 Atlantic Ave # 124, Raleigh, NC 27604
---------	--

Phone	828-551-6511	Email	bobby@millsconstructionco.com
-------	--------------	-------	-------------------------------

Applicant Name	Bobby Funk
----------------	------------

Address	4501 Atlantic Ave # 124, Raleigh, NC 27604
---------	--

Phone	828-551-6511
-------	--------------

Signature 

Printed Name Bobby Funk

*Signature of the property owner acknowledges that if the property is rezoned, the property involved in this request is bound to the use(s) authorized, the approved site plan and any conditions imposed, unless subsequently changed or amended as provided for in the Zoning Ordinance.*

Property Owner: Name	North Main Street Properties of Hendersonville, LLC
----------------------	---

Address	PO Box 1776, Hendersonville, NC 28793
---------	---------------------------------------

PID or PIN #	9569955941
--------------	------------

Signature  12/1/2020

Printed Name Paul H. Batke member/manager

Property Owner: Name	North Main Street Properties of Hendersonville, LLC
----------------------	---

Address	PO Box 1776, Hendersonville, NC 28793
---------	---------------------------------------

PID or PIN #	9569964013
--------------	------------

Signature  12-1-2020

Printed Name Paul H. Batke member/manager

Official Use:  
FILE NO. \_\_\_\_\_



Signature pages for Conditional Zoning District Petition

Section 7, Item A.

Signature of the property owner acknowledges if the property is rezoned, the property involved in this request is bound to the use(s) authorized, the approved site plan and any conditions imposed, unless subsequently changed or amended as provided for in the Zoning Ordinance.

Property Owner: Name Green Holdings, LLC

Address PO Box 1776, Hendersonville, NC 28793

PID or PIN 9569957758

Signature Paul H. Beke 12/1/2020

Printed Name Paul H. Beke member/Manager

Property Owner: Name

Address

PID or PIN

Signature

Printed Name

Property Owner: Name

Address

PID or PIN

Signature

Printed Name

Property Owner: Name

Address

PID or PIN

Signature

Printed Name

Official Use:

FILE NO.

Conditional Zoning



Order:	J000674188	Pubs:	2,3	Rate:	LE
Phone:	(828)697-3003	Class:	0001		
Account:	32002031	Start Date:	02/21/2021		
Name:	ATTN: Angela	Stop Date:	02/28/2021	Payments:	\$ 0.00
Caller:	Angela Reece	Insertions:	4	Balance:	\$ 146.40
Taken By:	S037	Columns:	2	Lines:	81
Schedule:	HTN Times News 2/21 1x, s2/28 1x			Taken On:	02/18/2021
SalesRep	Nancy Mullinax				

## PUBLIC HEARING NOTICE

Notice is hereby given that the City of Hendersonville City Council will hold two public hearings and one quasi-judicial, evidentiary hearing on Thursday, March 4, 2021, at 5:45 p.m., in City Hall on the Second Floor located at 160 Sixth Avenue E, Hendersonville NC to consider the following:

**I. Conditional Zoning District** - Application for a conditional rezoning from Bobby Funk, Green Holdings LLC and North Main Street Properties of Hendersonville, LLC. The applicants are requesting to rezone the subject property, PIN 9569-95-7758, 9569-95-5941 and 9569-96-4013 and located on Duncan Hill Road, from R-20, Low Density Residential District to PRD CZD, Planned Residential Development Conditional Zoning District for the construction of an 84-unit multi-family development.

**II. Conditional Zoning District**- Application for a conditional rezoning from Henderson County Hospital Corporation and Henderson County. The applicants are requesting to rezone the subject property, PIN 9569-50-9133, 9569-50-8164, 9569-50-7165 and 9569-59-9771 and located on N. Justice Street, Brown Street and 9th Avenue, from PCD, Planned Commercial Development and MIC, Medical, Institutional, Cultural District to PCD CZD, Planned Commercial Development Conditional Zoning District for the removal of the existing EMS building and improvements to the hospital entrance and parking.

**III. Special Use Amendment** - Application from Tony Bloemsma and Beacon Commons Property, LLC for Beacon Commons located on PIN 9568-75-7715, at 475 S. Church Street. The applicant has submitted amended site plans for the previously approved Beacon Commons development that includes a mix of commercial and residential units. The applicant has requested to change some of the commercial space to residential condos. This change requires an amendment to the existing Special Use Permit for the Beacon Commons development. **This will be conducted as a quasi-judicial, evidentiary hearing. The Council may only consider evidence introduced at the hearing. Persons wishing to participate in this hearing must attend the hearing in person. Individuals should not contact City Council members regarding this application prior to the hearing.**

The Mayor and City Council Members will attend the hearings in person. In-person attendance by the public will also be permitted; however, in compliance with Governor Cooper's Executive Orders and social distancing guidelines, in person attendance of the public will be limited as spacing permits. For matters I and II above, public hearing comments will be accepted from those attending in person at the designated time at this meeting. The public may also view and verbally comment during this public hearing live via ZOOM. For security reasons screen sharing will not be allowed. The meeting instructions to join by Zoom will be available on the City's website by visiting <https://www.hendersonvillenc.gov/events-calendar>. Comment period instructions will also be displayed at the appropriate times during the meeting.

Anyone wishing to submit written public comment for matters I and II public hearings prior to the meeting may visit <https://www.hendersonvillenc.gov/comment> to submit their comment. Written comments must be submitted by **noon on March 4, 2021** to be considered by the City Council. If comments include **photo(s) or video they must be submitted by 8:00 a.m. on March 3, 2021.**

For matter III, persons must attend in person if they wish to participate, and only evidence concerning the application for the special use amendment presented at the quasi-judicial, evidentiary hearing, will be considered by City Council. All testimony will be given under oath. General public comments will not be received.

The City of Hendersonville is committed to providing accessible facilities, programs, and services for all people in compliance with the Americans with Disabilities Act (ADA). Should you need assistance or a particular accommodation for this meeting please contact the City Clerk, Angela Reece at 697-3005 no later than 24 hours in advance of the meeting.

2/21, 2/28, 2021

674188

Attention: \_\_\_\_\_ Fax: \_\_\_\_\_

This is a final proof. If any information is incorrect, please contact your sales representative prior to the deadline of the first insertion. Otherwise your order is accepted as having been approved.

City of Hendersonville

Certification of Mailing of Public Notice

IN RE: Pardee Improvements

File # P21-03-CZD

I hereby certify that official notice of the City Council Meeting on March 4, 2021, has been sent with regard to this matter by U.S. Mail on the date indicated below and as specified in this document.

The parties to whom notice was mailed are indicated on the sheets attached hereto as Exhibit A. Those listed on Exhibit A were mailed the letter, a copy of which is attached as Exhibit B.

Date Mailed: 02.17.21



Terri Swann  
Administrative Aide

Henderson County, North Carolina

I certify that the following person personally appeared before me this day, acknowledging to me that she signed the foregoing document:

\_\_\_\_\_.

Date: \_\_\_\_\_

Notary Signature: \_\_\_\_\_

Notary Printed Name: \_\_\_\_\_  
(Official Seal)

My Commission Expires: \_\_\_\_\_



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Henderson County Attn: Steve Wyatt, County Manager 1 Historic Courthouse SW Ste. 2 Hendersonville, NC 28792	PELLETT, LINDA DARLENE 1916 FORD ST OGDENSBURG, NY 13669	NOWAK, CHRISTOPHER RICHARD 200 PINE DR FLAT ROCK, NC 28731
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SIXTH AVENUE WEST LLC  
2 WESTWOOD DR  
JOHNSON CITY, NY 13790

WISE DEVELOPMENTS LLC  
PO BOX 804  
MOUNT AIRY, NC 27030



Ordinance # 21-\_\_\_\_\_

**AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND THE OFFICIAL ZONING MAP OF THE CITY OF HENDERSONVILLE FOR PARCELS OF THE HENDERSON COUNTY HOSPITAL CORPORATION & HENDERSON COUNTY (PARDEE HOSPITAL CAMPUS - PIN# 9569507165, 9569508164, & 9569509133) BY CHANGING THE ZONING DESIGNATION FROM MIC (MEDICAL INSTITUTIONAL, CULTURAL ZONING DISTRICT) TO PCD (PLANNED COMMERCIAL DEVELOPMENT CONDITIONAL ZONING DISTRICT)**

IN RE: 0 N. Justice St (PIN 9569507165), 0 9<sup>th</sup> Ave W (9569508164), 650 Brown St (PIN 9569509133)

(File # P21-03-CZD)

**WHEREAS**, the City is in receipt of a Conditional Rezoning application from Pardee Hospital for the construction of circulation enhancements and expanded surface parking;

**WHEREAS**, the Planning Board took up this application at its regular meeting on February 8, 2021; voting to neither approve nor deny a recommendation to City Council to adopt an ordinance amending the official zoning map of the City of Hendersonville, and

**WHEREAS**, City Council took up this application at its regular meeting on March 4<sup>th</sup>, 2021, and

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Hendersonville, North Carolina:

1. Pursuant to Article XI of the Zoning Ordinance of the City of Hendersonville, North Carolina, the Zoning Map is hereby amended by changing the zoning designation of the following:

PINS 9569507165, 9569508164, 9569509133 from MIC Medical Institutional Cultural to PCD Planned Commercial Development Conditional Zoning District.

2. Development of the parcels shall occur in accordance with the final site plan requirements of Article VII of the Zoning Ordinance of the City of Hendersonville, North Carolina, and shall be subject to the site limitations and conditions stipulated on the published List of Uses and Conditions.

3. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this 4<sup>th</sup>, day of March 2021.

Attest: \_\_\_\_\_  
Barbara G. Volk, Mayor, City of Hendersonville

\_\_\_\_\_  
Angela L. Reece, City Clerk

Approved as to form:

\_\_\_\_\_  
Angela S. Beeker, City Attorney

STATE OF NORTH CAROLINA, COUNTY OF HENDERSON

I, Amy H. Knight, a Notary Public in Henderson County, State of North Carolina, do hereby certify that Barbara G. Volk in her capacity of Mayor of the City of Hendersonville; Angela L. Reece, in her capacity of City Clerk; and Angela S. Beeker, in her capacity as City Attorney, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

My commission expires:

\_\_\_\_\_  
Amy H. Knight

## List of Uses & Conditions: Pardee Entrance & Parking Lot (File # P21-03-CZD)

### I. Stipulated Uses:

**Only the following uses are authorized for the referenced development:**

- Parking lots

### II. Conditions:

#### (1) Shall Be Attached to the Conditional Rezoning and Satisfied Prior to Issuance of Final Site Plan Approval:

##### City-Initiated Conditions:

- i. *Preservation of Existing Trees – The developer will preserve the trees noted on the Landscape Plan (shaded blue), in addition to any others over 30” dbh, to the greatest extent possible and in accordance with Tree Preservation Code Section 15-4 Existing Vegetation (c) regardless of whether the identified trees are credited towards the landscape requirements. Revisions to the Site Plan may be necessary.*
- ii. *Lighting will be in accord with the International Dark Sky Association standards*

#### (2) Shall Be Attached to the Conditional Rezoning:

- iii. *Final plans for the project shall comply with approved plans, the conditions agreed to on the record of this proceeding and applicable provisions of the Hendersonville Zoning Ordinance and Code of Ordinances.*

*With their signatures below, the undersigned applicant(s) and property owner(s) consent to and agree to the imposition of all conditions stated.*

Applicant  
Signature:\_\_\_\_\_

Printed Name:\_\_\_\_\_

Date:\_\_\_\_\_

Property Owner:  
Signature:\_\_\_\_\_

Printed Named:\_\_\_\_\_

Date:\_\_\_\_\_

Title within LLC:\_\_\_\_\_

## Community Development Staff Report

**TO:** City Council  
**FROM:** Community Development Department - Planning Division  
**RE:** Rezoning - MIC (Medical, Institutional, Cultural) to PCD (Planned Commercial Development Conditional Zoning) for Pardee Hospital Entrance / Brown Street Parking Lot  
**FILE #:** P21-03-CZD  
**DATE:** March 4, 2021

### PROJECT DESCRIPTION

The City is in receipt of a Conditional Rezoning application from Pardee Hospital for a multi-faceted project centered around enhanced access/circulation and additional surface parking. More specifically, the project involves the removal of the former EMS building, the partial closure of the Brown Street Right-of-Way (ROW), improvements to the hospital's main entrance, addition of new surface parking off of N. Justice St and 9<sup>th</sup> Ave W (111 new spaces), and enhancements for vehicular and pedestrian circulation between the added parking lot and the main entrance.

This project triggered the Conditional Zoning process due to the incorporation of this project with the existing Pardee Hospital Campus. The Pardee Hospital Campus is zoned PCD (Planned Commercial Development) and the original development of the hospital was approved with a Special Use Permit. Given Hendersonville's recent incorporation of Conditional Zoning, all development or redevelopment of this type, which involves the consolidation of land to a Planned Development and/or Special Use project, triggers the Conditional Zoning process.

Summary Analysis - The project includes the demolition of the former EMS building which will significantly enhance the Main Entrance; providing increased visibility and functionality of pedestrian and vehicular circulation.

The project also includes the addition of 111 parking spaces on a 3-parcel site that is currently a wooded, vacant property at the corner of 9<sup>th</sup> Ave and N. Justice St. This site is a well-maintained, park-like setting with a large tree canopy and grass lawn (no understory or subcanopy). The proposed project will drastically alter the current "campus-like" character of the property.

In an effort to minimize the aesthetic and environmental impact of the project, the proposed landscape plan calls for preserving some existing trees as well as providing a significant number of new plantings.



Pardee Hospital representatives started the conditional rezoning process in late December of 2020. The applicant participated in a Neighborhood Compatibility Meeting held on January 19, 2021. The following site plan is submitted for your review as part of the consideration of the Conditional Zoning. The project meets all basic requirements of the Zoning Code.

## PROCESS GUIDELINES

In reviewing a rezoning request, staff, the Planning Board and City Council are tasked with reviewing the project to determine how it fits into our community based on our guiding documents and plans. The specific categories of review are identified in Section 11-4 of the *City's Zoning Ordinance*, which highlights that the following factors shall be considered prior to adopting or disapproving an amendment to the City's Official Zoning Map. Additionally, the *2030 Comprehensive Plan* provides guidance on the review of zoning changes.

### Zoning Code Section 11-4:

1. **Comprehensive Plan consistency.**  
Consistency with the Comprehensive Plan and amendments thereto.
2. **Compatibility with surrounding uses.**  
Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject property.
3. **Changed conditions.** Whether and the extent to which there are changed conditions, trends or facts that require an amendment.
4. **Public interest.** Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern that benefits the surrounding neighborhood, is in the public interest and promotes public health, safety and general welfare.
5. **Public facilities.** Whether and the extent to which adequate public facilities and services such as water supply, wastewater treatment, fire and police protection and transportation are available to support the proposed amendment.
6. **Effect on natural environment.** Whether and the extent to which the proposed amendment

#### Figure 8.3a: Zone Change Review Criteria

In addition to determining whether a zone change application demonstrates a clear public purpose, the City should consider the criteria listed below. These criteria help to ensure that zone changes will promote the health, safety and general welfare of the public.

1. Consistency with the Goal, Recommended Land Uses, and Development Guidelines of the applicable Future Land Use Plan category
2. Consistency with all other applicable Goals of the Comprehensive Plan
3. Compatibility between the requested use or zoning district and the prevailing uses in the surrounding area
4. Whether the requested use or zoning district benefits the surrounding neighborhood and general public or a small area and only one or a few landowners
5. Whether the design of the requested use (or available design standards and guidelines associated with the requested zoning district) mitigate potential conflicts between uses
6. Potential impacts on environmentally sensitive areas (if applicable)
7. Potential impacts on agricultural resources (if applicable)
8. Potential impacts on certified historical properties and historic districts (if applicable)
9. Potential impacts on area access and traffic patterns
10. Adequacy of public services and facilities for water supply, wastewater treatment, fire and police protection, and transportation to support the requested use or zoning district
11. Adequacy of public parks, recreation and educational facilities to support the requested use or zoning district

## Rezoning Request Context Analysis

### COMPREHENSIVE PLAN CONSISTENCY

#### LAND USE & DEVELOPMENT (CHAPTER 8):

The subject property is classified as **Urban Institutional** on the *2030 Comprehensive Plan's Future Land Use Map (FLUM)*. A site-specific section of the *FLUM* (Appendix F) is included in this staff report.

The *FLUM* designates parcels to the north, east, south and west as **Urban Institutional**. Parcels to the northwest are designated as **Medium Intensity Neighborhood**.

The goal of the **Urban Institutional** classification is outlined below with specific relevant sections highlighted:



#### Goal LU-12.

***Urban Institutional:*** Create a cohesive, well-defined urban campus for medical and educational institutions, with supportive office, service and residential uses, that is integrated with Downtown.

#### Strategy LU-12.1.

##### Locations:

- Area surrounding Pardee Memorial Hospital

#### Strategy LU-12.2.

##### Primary recommended land uses:

- Public and institutional uses
- Offices
- Structured or underground parking

#### Strategy LU-12.3.

##### Secondary recommended land uses:

- Single-family attached residential
- Multi-family residential
- Live-work units
- Limited retail and services

#### Strategy LU-12.4.

##### Development guidelines:

- Similar development standards to Downtown Support
- Encouragement of neighborhood master-planning that links hospital with offices, services and Downtown
- Development and maintenance of traffic calming improvements

The goal of the **Downtown Support** classification is outlined below with specific relevant sections highlighted:



#### Goal LU-11.

***Downtown Support:*** Support the Downtown retail core and create a transition between Downtown Core and adjacent residential neighborhoods.

#### Strategy LU-11.1.

##### Locations:

- Area between Downtown Core and Jackson Park
- Transitional areas between Downtown Core and neighborhoods to the north, south, and west

#### Strategy LU-11.2.

##### Primary recommended land uses:

- Offices
- Single-family attached and multi-family residential
- Live-work units
- Public and institutional uses
- Arts and entertainment establishments
- Structured or underground parking

#### Strategy LU-11.3.

##### Secondary recommended land uses:

- Retail
- Parks and plazas

#### Strategy LU-11.4.

##### Development guidelines:

- Minimal front setback
- Rear or limited side parking only
- Façade articulation
- Development and maintenance of traffic calming improvements
- Ground-floor storefronts and/or architectural detailing on parking structures





## NATURAL & ENVIRONMENTAL RESOURCES (CHAPTER 3):

Chapter 3 of the City's **2030 Comprehensive Plan** is also relevant to this proposal and the impact of this type of development. The **Natural Resources** chapter focuses on several key goals and objectives including the use of green infrastructure, the reduction of flooding through limitation of impervious surfaces (in the vicinity of floodplains) and the preservation of trees. Below are some key takeaway from this chapter as it relates to the Pardee project:

### Goal NR-2.

*Provide a variety of quality open space, distributed equitably throughout Hendersonville, that can be used for recreational opportunities and aesthetic enhancements.*

### Strategy NR-2.3.

**Promote preservation of woodlands.** Mature trees and wooded areas are significant community-defining natural features that contribute to Hendersonville's identity. Trees provide several additional community benefits, as described in Figure 3.3c.

#### Action NR-2.3.1

Continue to encourage tree

preservation by providing existing tree preservation credit toward landscaping requirements.

#### Action NR-2.3.2

Continue to allow the Tree Board to review and provide recommendations for tree preservation for Special Use Permit projects.

#### Action NR-2.3.3

Adopt ANSI A300 of the Accredited Standards Committee (ASC) of the American National Standards Institute for the maintenance and pruning of trees on City controlled property and rights-of-way.

#### Action NR-2.3.4

Promote right tree in the right place standards when planting new trees.

#### Action NR-2.3.5

Encourage larger developments to place structures and roadways in areas where land has been disturbed and trees have already been removed.

### Figure 3.3c: Community Benefits of Trees

#### Cooling/Reduced Energy Costs

The shading and cooling effects of trees can provide comfort in urban areas and reduce energy costs. The net cooling effect of a young, healthy tree is equivalent to room-size air conditioners operating 20 hours a day. Furthermore, trees placed properly around buildings can reduce air-conditioning needs by 30 percent and can save 20 to 50 percent in heating costs (source: U.S. Department of Agriculture).

#### Increased property value

Healthy, mature trees add an average of 10 percent to a property's value (source: USDA Forest Service).

#### Improved air quality

One acre of forest absorbs six tons of carbon dioxide and produces four tons of oxygen, which is enough to meet the annual needs of 18 people (source: U.S. Department of Agriculture).

#### Stress relief

According to research at Texas A&M University, visual exposure to settings with trees has produced significant recovery from stress within five minutes.

#### Improved water quality

Tree leaves and roots help to reduce stormwater runoff and erosion through rainwater interception, absorption and soil stabilization. Wooded areas help to prevent the transport of sediment and chemicals into streams (source: USDA Forest Service).

### Goal NR-3.

*Reduce the ecological footprint of developed and developing areas in order to reduce the impact on natural resources, create a healthy, sustainable community and reduce energy costs.*

### Strategy NR-3.2.

**Enable and encourage Low-Impact Development practices in stormwater management.** Low Impact Development (LID) is an innovative approach to stormwater management that mimics natural hydrological processes and focuses on both the quality and quantity of stormwater. See Strategy WR-2.3 in Chapter 6 for details and examples of LID practices.

### Strategy NR-2.4.

**Promote the location and design of open space areas within developments so that they contribute to and link individual homes to the City's green infrastructure network.** A continuously linked system of green infrastructure provides continuity in ecological systems, increased opportunities for stormwater management, and provides a space in which to construct pedestrian paths that link together neighborhoods and parks. Future open space areas should be viewed as an extension or component of the City's green infrastructure network, as illustrated in Map 3.3a.

#### Action NR-2.4.1

Encourage development and redevelopment projects to provide open space areas that connect to planned green infrastructure areas.



## WATER RESOURCES (CHAPTER 6)

In addition to Chapter 3's references to Green Infrastructure and use of Low Impact Development practices for Stormwater Management, Chapter 6 also provides detail for the handling of stormwater.

### Strategy WR-2.3.

**Enable and encourage Low-Impact Development practices in stormwater management.** Low Impact Design (LID) is an innovative approach to stormwater management that mimics natural hydrological processes and focuses on both the quality and quantity of stormwater. Table 6.3a and Figure 6.3a compare LID to conventional stormwater management and illustrate examples of LID.

#### Action WR-2.3.1

Educate development review officials about Low-Impact Development approaches.

#### Action WR-2.3.2

Review public roadway dimensional requirements and revise as necessary to allow narrower street widths on local streets (see Table 6.3b for additional information).

#### Action WR-2.3.3

Review driveway and parking regulations and revise as necessary to make efficient use of land and reduce impervious surfaces (see Table 6.3b for additional information).

#### Action WR-2.3.4

Develop design guidelines for Integrated Management Practices (see Table 6.3b for examples) and incorporate them into the stormwater management plan review process as an alternative to conventional stormwater management practices.

#### Action WR-2.3.5

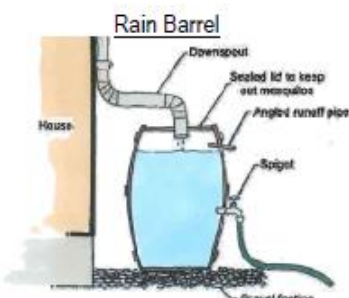
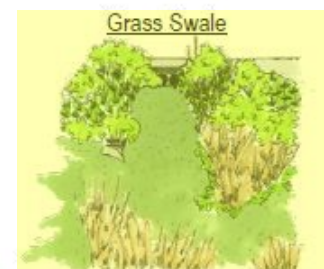
Develop educational materials that instruct property owners on how to implement and maintain Low-Impact Development features such as bioswales.

#### Action WR-2.3.6

Promote LEED (Leadership in Energy and Environmental Design) principles for sustainable site design. Strategy NR-3.1 in Chapter 3 includes specific actions for encouraging LEED certification.

Figure 6.3a: Examples of LID Practices, continued

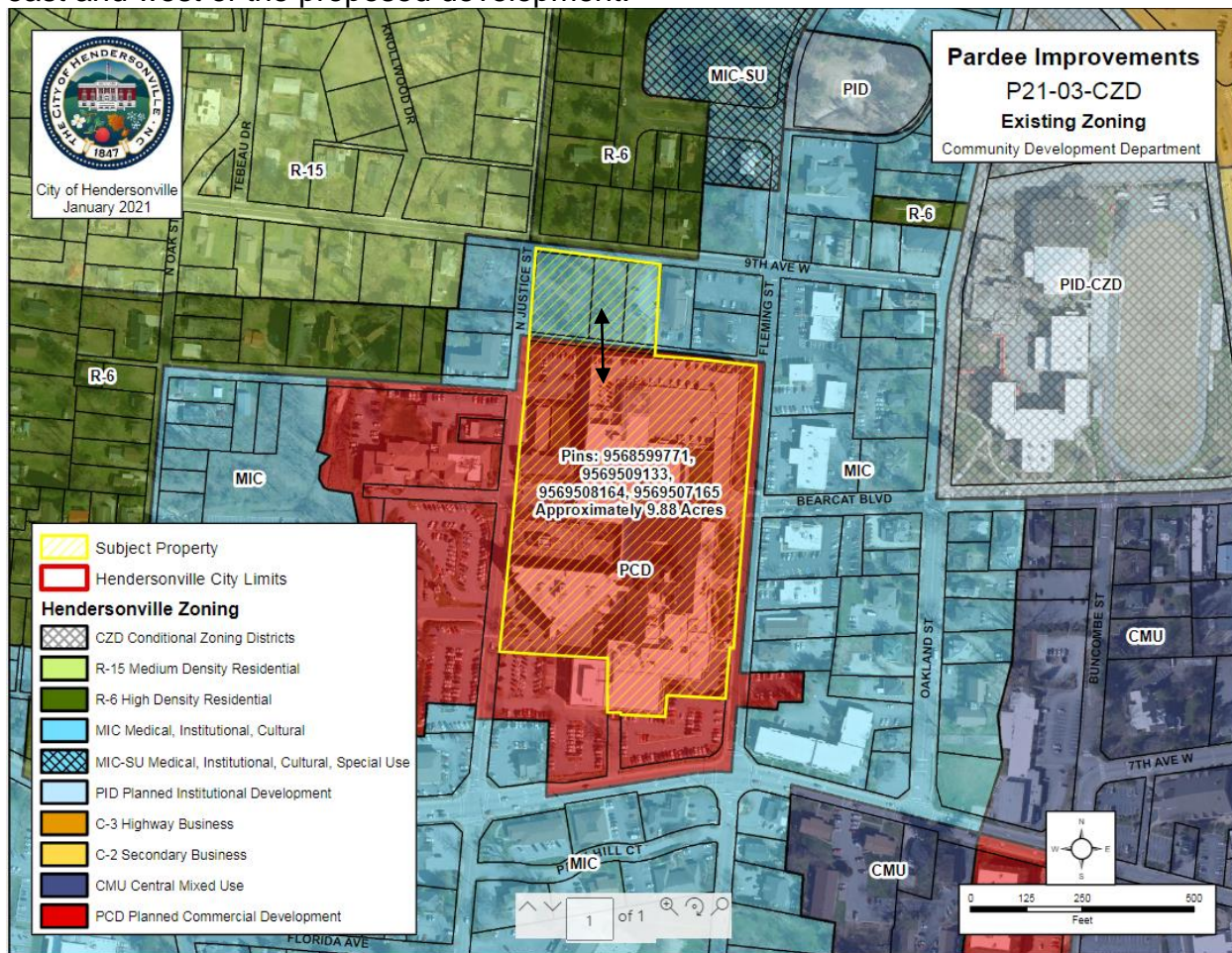
#### Integrated Management Practices



## SURROUNDING LAND USE – COMPATIBILITY & ZONING

There are 3 parcels associated with this proposed parking expansion and new access/circulation plan. The 3 parcels are currently zoned MIC (Medical, Institutional, Cultural) and the site is currently vacant. Surrounding land uses and zoning districts are shown on the “Existing Land Use Map” (Appendix E) and “Existing Zoning Map” (shown below).

The parcels proposed to be a part of the development project are directly abutted by PCD (Planned Commercial Development) to the South (Pardee Hospital Campus). To the north, the parcels are directly across the street and catty-corner from Residential Uses and Zoning Districts (R-6 & R-15), therefore these parcels serve as a transition from Commercial to Residential. MIC (Medical, Institutional, Cultural) Zoning is located to the east and west of the proposed development.



## **SITE PLAN REVIEW (TECHNICAL INPUT / ZONING CODE)**

The site plan is included as Appendix A in this report. The Development Review Committee (DRC) met on January 6, 2021 to discuss this project. Comments received from that meeting are incorporated in the review below. Additionally, Planning Staff performed additional review of this proposal between the DRC meeting and the writing of this staff report.

### **Buildings**

- No Buildings Proposed

### **Lot Size**

- The project area shown on the site plan is 2.9 acres or 126,324 square feet.

### **Project Summary**

- Removal of former EMS Building
- Partial Closure of Brown Street ROW
- Enhanced Entrance, New Exit and Improved Circulation
- Provision of 111 new surface parking spaces

### **Site Impact**

- Predevelopment Impervious Surface = 1.07 Acres (37%)
- Post-development Impervious Surface = 1.65 Acres (57%)
- Predevelopment Open Space = 1.83 Acres (63%)
- Post-development Open Space = 1.25 Acres (43%)
- See “Tree Survey & Buffering” below for additional information.

## **Zoning District Standards – PCD (CZD) Planned Commercial Development Section 5-15**

- Development Standards for PCD includes the following categories:
  - Uses
    - The proposed site use is “Parking Lot”, which is a permitted use within PCD.
  - Vehicular Access
    - PCD allows for primary access off of a Boulevard, Major Thoroughfare or Minor Thoroughfare. N Justice St is classified as a Minor Thoroughfare.
  - Setbacks
    - In PCD typically a 40’ setback is required when parking is located in the front of a building. The removal of the former EMS building will satisfy the 40’ setback requirement by leaving only the current Pardee Hospital building and parking structure (which is setback approximately 135’ from the N. Justice St property line).

- Parking, Driveways & Loading:
  - Section 6-5 of the Zoning Code applies.
  - Proposed parking spaces and loading zones meets or exceeds requirements.
- Buffering & Landscaping
  - Landscaping is required under Section 15-2 (b).
  - The proposed Landscape Plan (Appendix C) shows the retention of existing trees along the perimeter of the project area along with the provision of additional landscaping which exceeds the minimum zoning code requirements.
  - Preservation of existing trees is recommended under Section 15-4 (a).
  - Additional specifics on Tree Preservation found below.
- Building Height – N/A
- Circulation & Access
  - Vehicular:
    - Enhancements to provide a dedicated hospital entrance, dedicated hospital exit, and improved drop-off zones, as well as continued access from Fleming St to the parking garage and to east end of Brown St, will provide “*safe and convenient access to appropriate project facilities*” as is called for in the Zoning Code.
  - Pedestrian:
    - Interior sidewalk connections are proposed to connect to the Parking Deck. This provides sheltered pedestrian access to the hospital. Additional external pedestrian access is provided to the sidewalk along N. Justice St. This route provides access to the hospital along sidewalks adjacent the newly proposed exit and enhanced entrance area.
    - In order to preserve existing trees (more on Tree Preservation below), no sidewalks are proposed by the developer for N. Justice St and 9<sup>th</sup> Ave. Sidewalks are required by the Zoning Code. Fee-in-lieu is an option in certain cases. However, the Planning Board recommends the final site plan should reflect the provision of sidewalks as required by code (additional information below).
- Density – N/A

#### **Parking Requirements - Table 6-5-2**

- Project is in addition to minimum parking requirements. The code requires 1 space per every 2 hospital beds. There are 222 hospital beds requiring 111 spaces. The current parking tally is 361 standard spaces, 9 ambulance spaces, and 60 accessible spaces. After this project there are proposed to be 472 standard spaces, 6 ambulance spaces, and 60 accessible spaces.

#### **Traffic Impact Analysis - Section 6-18**

- A Traffic Impact Analysis (TIA) was not required for this project.



### **Entrance/Exit**

- Access to the project site will include an enhanced entrance at the existing main hospital entrance, a new exit on to N. Justice St made possible by the removal of the former EMS building, and a new entrance/exit for the proposed surface parking lot also off of N. Justice Street. The remainder of Brown St (eastern half) will remain public ROW and will also provide access to the proposed surface parking lot.

### **Sidewalks - Section 6-12 and 5-15-4.5**

- ...Continuing from the Circulation & Access notes above:
- No Sidewalks are present along project area. Sidewalks are required within the PCD.
- Due to the topography of the site and the drop in grade down to N. Justice St / 9<sup>th</sup> Ave, the provision of sidewalks along the project area may result in the loss of existing trees along N. Justice St and 9<sup>th</sup> Ave due to impact on root zones of existing trees (see diagram in yellow (sidewalk) and red (slope) below). Provision of a retaining wall could alleviate concerns of tree preservation.
- Planning Board recommends that Tree Preservation be pursued as well as the construction of sidewalks according to code. Ultimately consideration must be given to weigh the balance between tree preservation and construction of sidewalks.



### **Project Phasing - Section 7-5**

- The project does not appear to be phased.

### **Tree Survey & Buffering - Section 15**



### **Stormwater Management**

- The site plan was reviewed by the City's Stormwater Division. The proposed stormwater facilities meet basic requirements. The comments received from staff included a recommendation to consider green infrastructure techniques such as bioswales to reduce the demand on underground storage of runoff and provide a greater ecological benefit. However, it has been determined, that due to the slope of the site, a bioswale would not function properly as part of this project.

## **PUBLIC INPUT NEIGHBORHOOD COMPATIBILITY MEETING**

Representatives from Pardee Hospital and their development team hosted a Neighborhood Compatibility Meeting on January 19, 2021. Three Planning staff members participated in-person as well as two members of the public whom participated virtually. Below is a summary of the items discussed at the meeting. The full minutes from that neighborhood compatibility meeting are included as Appendix G in this staff report.

The following questions or comments were brought forth by the public. The applicants' responses are shown in red:

- Why wasn't the original parking deck built larger so that this development wouldn't be needed? Is this parking project part of the master plan? **This parking lot was not part of the master plan. It would be hard to have this as part of the master plan with all the property that Henderson County and Pardee have acquired. The need for more parking has evolved over time and they are trying to serve the county.**
- What is the routing / circulation plan? **Two entry points to parking garage will remain – one from N. Justice St and one from Fleming St. Current Entrance/Exit will be converted to Entrance only and a standalone Exit will be constructed. The new surface parking will have another access point off of N. Justice St.**
- Will the parking lot be monitored, and will it be used day and night 24/7? **Yes. The Parking lot will be available 24/7 and will be lit. Pardee Hospital will be responsible for Security. The area will be added to existing rounds.**
- How will the stormwater runoff flow be handled? How will it affect the City's infrastructure? **Stormwater will be managed and feed into the City's existing infrastructure. The plans are being reviewed by and coordinated with engineering staff.**
- Will the large canopy of trees on the site be preserved? **A selection of trees will be maintained.**
- Concern was expressed over compatibility with the adjacent residential area. **A buffer is not required across a street. The applicant expressed that the parking lot with the preservation of trees was compatible with the surrounding medical offices and commercial uses in the area.**

- What is the future of Brown Street and will a TIA be offered? Only a portion of Brown St is being closed (west side). The portion being closed is a safety hazard. The east side will remain open. The impact of the project did not warrant a TIA.
- Concern was expressed over additional traffic on 9<sup>th</sup> Avenue, specifically due to impact this would have on pedestrians using this route. No specific answer.
- How the grade will connect to N. Justice Street? Current grade does not meet NCDOT/City criteria. This was exemplified by the anecdote of the Applicant having witnessed a fire truck stuck on this grade at some point in the past. Closing this portion of Brown St eliminates need for graded connection to N. Justice St.
- What is the completion timeline? Will break ground in April. Completed by October 2021.



## Staff Report Recommendations

### STAFF REVIEW

In this section, staff will include recommended conditions for approval alongside references to supporting comprehensive plan language, ordinance standards and/or public input. Planning Board may recommend approval of the rezoning request to City Council with or without conditions or recommend denial of the rezoning request.

#### Staff Analysis:

##### Use -

- The **2030 Comprehensive Plan** outlines a few goals and objectives that are relevant to this proposed Site Plan.
  - The *Future Land Use Map* identifies this area as **Urban Institutional**. As outlined previously in this report, the *Land Use and Development Element* characterizes the **Urban Institutional** category as land around Pardee Hospital that should be developed as a well-defined campus with medical and educational institutional uses mixed along side supportive office uses and serving as a transition zone between the Downtown core and Residential uses.
  - The **Urban Institutional** category also speaks of the use of parking structures and underground parking (rather than surface parking). Reference to similarities with the **Downtown Support** future land use category are also made. **Downtown Support** continues to speak to the appropriate use of structured or underground parking as well as limited side parking and rear parking (as opposed to parking lots that front streets).
- While the **Comprehensive Plan** is expressly aiming to limit surface parking, especially adjacent to public rights-of-way, the City's **Zoning Code** list "Parking Lots" as a permitted use.
- Given that surface parking is a permitted use in both the MIC (Medical, Institutional, Cultural) District and the PCD (Planned Commercial Development) District and that no additional building or development is proposed, no conditions related to the Comp Plan (such as requiring structured, underground, rear or limited side parking) would be appropriate as a recommended condition. Therefore, greater consideration should be given to limiting the impact of the proposed parking lot use.

##### Tree Preservation -

- Tree preservation was an issue raised by the public at the Neighborhood Compatibility meeting.
- The **2030 Comprehensive Plan** also calls for Tree Preservation in the **Natural Resources** Chapter. The **Urban Institutional** district is also characterized by a "well-defined campus". Campuses are often noted for their mature tree canopy.
- The Zoning Code also encourages Tree Preservation and outlines standards for protecting trees.

- Given the location of mature trees on the 3 vacant parcels at the north of the project area and given that the construction of surface parking lots does not align with the Comprehensive Plan, the preservation of as many trees as possible should be made a priority to minimize the impact of the additional impervious surface. This condition should be pursued even if it involves revisions to the submitted site plan.

#### **Sidewalks –**

- Impact to Pedestrians was an issue raised by the public at the Neighborhood Compatibility meeting.
- Despite being a Minor Thoroughfare, N. Justice St has a sidewalk on one side of the street but only a partial sidewalk on the other side of the street. 9<sup>th</sup> Ave has a sidewalk on one side of the street and no sidewalk on the Pardee Hospital side of the street.
- Therefore, sidewalk construction in this location is both supported by the City's **Pedestrian Plan** and required by the City's **Zoning Code**.
- Sidewalk construction featuring a sloping grade change along N. Justice St from Brown St to 9<sup>th</sup> Ave would certainly require the loss of additional large mature trees. Sidewalk construction with a sloped bank along 9<sup>th</sup> Ave from N. Justice St. towards Fleming St may also impact existing trees.
- Continuing with the goal of tree preservation, the construction of the required sidewalks may need to include a retaining wall in order to protect existing trees.

#### **Stormwater –**

- Stormwater management was an issue raised by the public at the Neighborhood Compatibility Meeting.
- The **2030 Comprehensive Plan** encourages the use of Green Infrastructure / Low Impact Development practices to reduce the impact of stormwater retention. The following benefits were provided by the Stormwater Division:
  - o Inspection and maintenance of above ground facilities is more efficient and any potential future repairs would be easier to complete on above ground facilities.
  - o Creates functional and aesthetically appealing site drainage
  - o Creates multifunctional conveyance system (habitat, ground water recharge, improve biodiversity) Hendersonville is a Tree/Bee City
  - o Reduces urban heat island effects
  - o Runoff is managed in a way that promotes the natural movement of water within the watershed
  - o Can be used as a public education tool for future developments in the community
  - o Is less costly than subsurface treatment
- This particular site proves challenging for the implementation of bioswales due to the sloping in the open space area and the amount of grading needed to create flat parking areas. Stormwater will be controlled using conventional underground storage tanks.

**Tree Board Recommendations:** The Tree Board unanimously voted to support the conditions as presented by Planning staff (which are reflected in the Conditions proposed by the Planning Board).

**Developer Proposed Conditions:** None

**Planning Board Recommended Conditions:** These conditions are included in the attached suggested motion. They can be included, removed or amended at Council's discretion and upon agreement by the parties involved.

1) *Preservation of Existing Trees – The developer will preserve the trees noted on the Landscape Plan (shaded blue), in addition to any others over 30" dbh, to the greatest extent possible and in accordance with Tree Preservation Code Section 15-4 Existing Vegetation (c) regardless of whether the identified trees are credited towards the landscape requirements. Revisions to the Site Plan may be necessary.*

2) *Dark Skies Appropriate Lighting*

It should be noted that while the Planning Board did pass along proposed Conditions, they do not recommend approval (or denial) of the proposed project.

After deliberating on this Conditional Rezoning application, an initial motion to deny was made. The vote was split 3-3 on the motion to deny, meaning the motion failed. The failed motion was as follows:

***Mr. Brown moved the City Council not adopt an ordinance rezoning the subject property for the following reasons: 1) it is not compatible with the surrounding area such as the neighborhood to the north and 2) it is not in the public interest to lay down another patch of asphalt and the effect it will have on the natural environment converting the three parcels into an impervious surface. Ms. Guffey second the motion which failed with a tie vote of 3 to 3.***

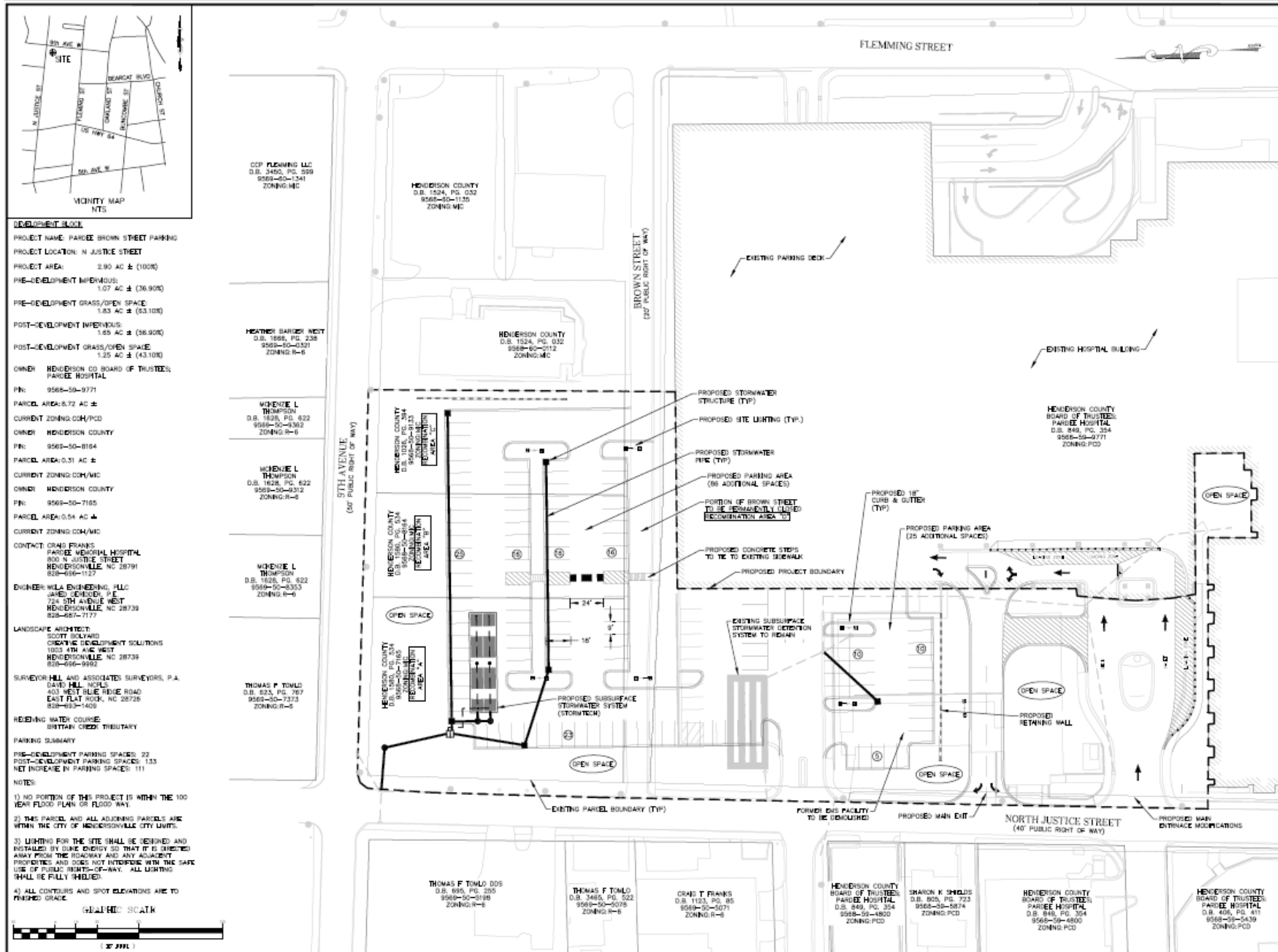
After additional discussion, the following motion was supported unanimously:

***Ms. Peacock made a motion to recommend neither approval or denial of the application but should City Council vote to approve the application the three conditions are recommended. Those are 1. The Tree Board recommendations be considered for the preservation or replacement of the trees, 2. Sidewalks be installed per the zoning code requirements and 3. The Dark Sky Initiative be considered. Mr. Blatt seconded the motion which passed unanimously.***

The "Dark Skies" condition was not included as part of the staff-recommended conditions,, however the City's Zoning Code does require a similar final product:  
6-13-4 Lighting. Lighting facilities, if provided, shall be aimed, directed, shielded or arranged so the light sources for such facilities do not cause undue glare on neighboring properties or interfere with the safe use of public rights-of-way.

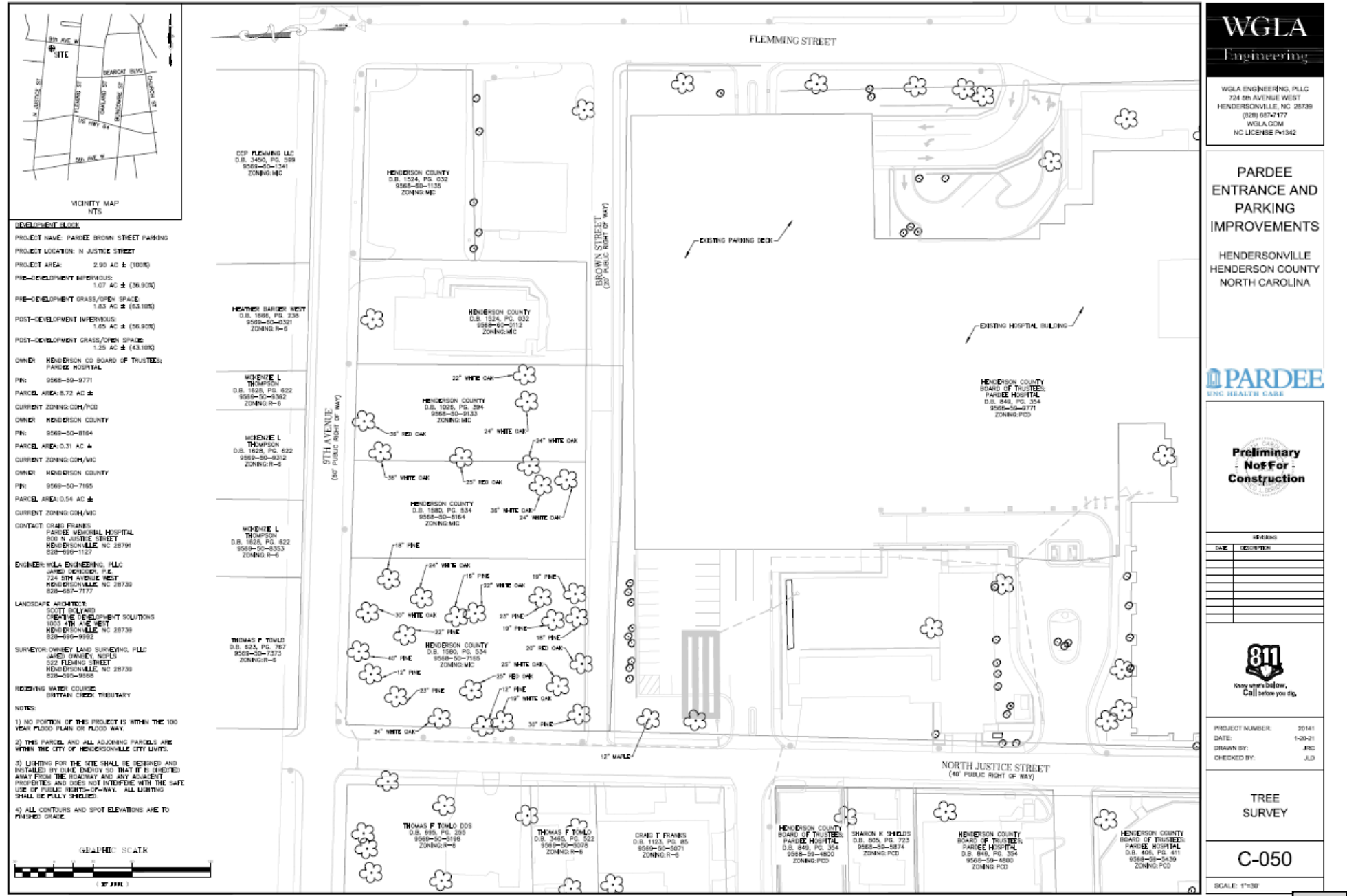
PLANNING BOARD  
 0 N JUSTICE/BROWN ST/9TH AVE – PARDEE ENTRANCE / BROWN STREET PARKING LOT  
 FEBRUARY 8, 2021  
 PAGE 17

## APPENDIX A – Site Plan

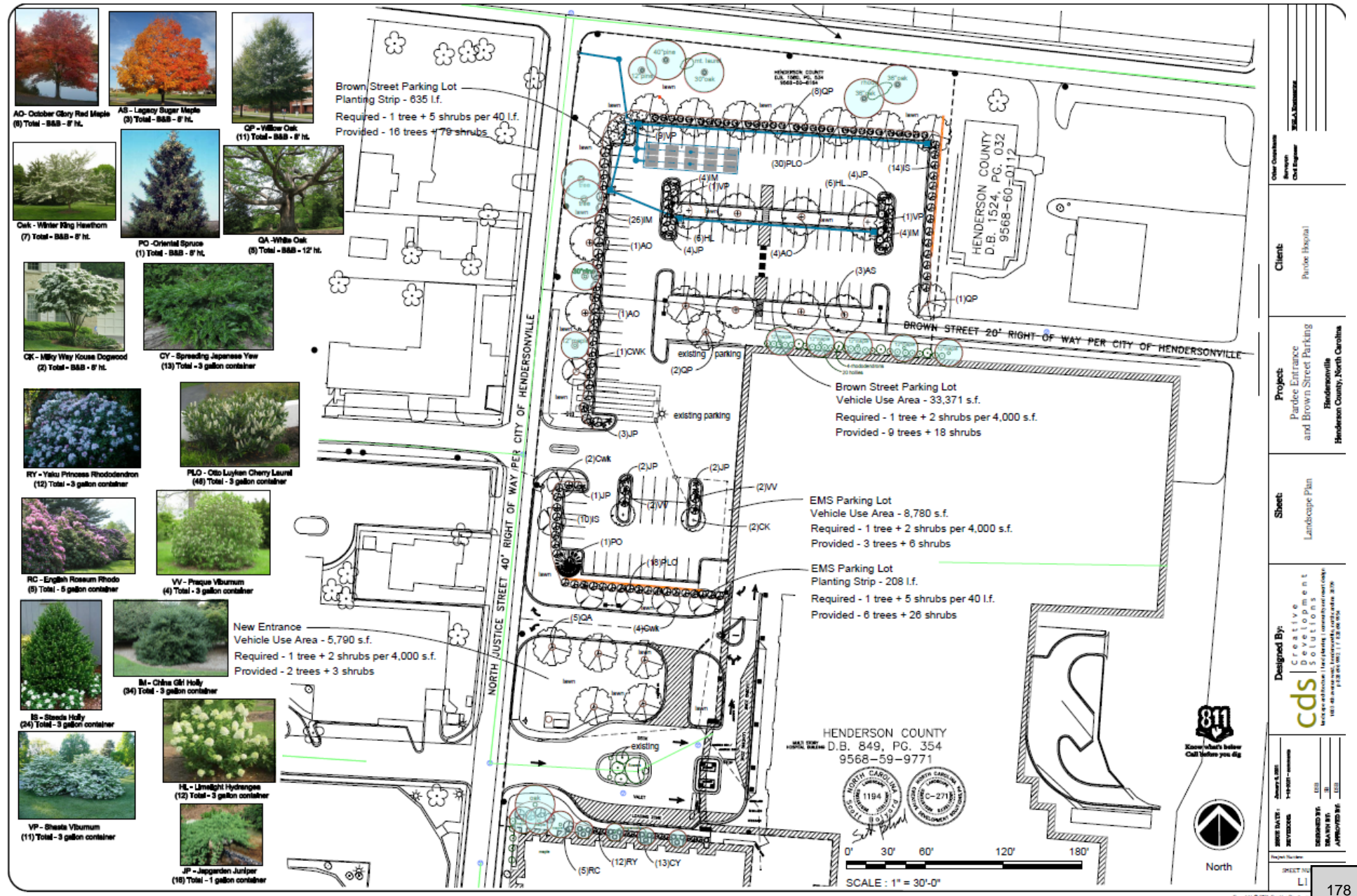




## **APPENDIX B – Tree Survey**



## APPENDIX C – Landscape Plan



## **APPENDIX D – Planning Board Minutes**

**VI Conditional Zoning District – Application for a conditional rezoning from Henderson County Hospital Corporation and Henderson County. The applicants are requesting to rezone the subject property, PIN 9569-50-9133, 9569-50-8164, and 9569-50-7165 located on N. Justice Street, Brown Street and 9<sup>th</sup> Avenue, from MIC, Medical, Institutional, Cultural District to PCD CZD, Planned Commercial Development Conditional Zoning District for the removal of the existing EMS building and improvements to the hospital entrance and parking. (File #P21-03-CZD). Mr. Manley gave the following background:**

The City is in receipt of a Conditional Rezoning application from Pardee Hospital for a multi-faceted project centered around enhanced access/circulation and additional parking. More specifically, the project involves the removal of the former EMS building, the partial closure of the Brown Street Right-of-Way, improvements to the hospital's main entrance, addition of new surface parking off of N. Justice Street and 9<sup>th</sup> Avenue West (with a total of 111 new spaces), and enhancements for vehicular and pedestrian circulation between the added parking lot and the main entrance.

This project triggered the Conditional Zoning process due to the incorporation of this project with the existing Pardee Hospital Campus. The Pardee Hospital Campus is zoned PCD, Planned Commercial Development and the original development of the hospital was approved with a Special Use Permit. Given the City of Hendersonville's recent incorporation of Conditional Zoning, all development or redevelopment of this type, which involves the consolidation of land to a Planned Commercial Development and/or Special Use project, triggers the Conditional Zoning process.

The project includes the demolition of the former EMS building which will significantly enhance the main entrance, providing increased visibility and functionality of pedestrian and vehicular circulation.

The project also includes the addition of 111 parking spaces on a 3-parcel site that is currently a wooded, vacant property at the corner of 9<sup>th</sup> Avenue and N. Justice Street. In an effort to minimize the aesthetic and environmental impact of the project, the proposed landscape plan calls for preserving some existing trees and providing a significant number of new plantings.

A Neighborhood Compatibility meeting was held January 19, 2021. A range of topics were covered at this meeting.

Factors included prior to adopting or disapproving an amendment to the City's official zoning map are, Comprehensive plan consistency, compatibility with surrounding uses, changed conditions, public interest, public facilities and the effect on the natural environment.

Mr. Manley discussed the Urban Institutional classification and the Downtown support classification. The City is moving away from surface parking and references that in the Downtown Support classification.

The Natural Resources chapter focuses on green infrastructure and the reduction of flooding through limitation of impervious surfaces and the preservation of trees.

The Tree Board has weighed in on this project. The Tree Board does support the staff's recommendation of preserving the trees and to preserve all trees over 30 inches in diameter at breast height (DBH) in accordance with Article XV Section 15-4 (c) of the Zoning Ordinance.

The parcels to be proposed to be part of the development project are directly abutted by PCD, Planned Commercial Development to the south (Pardee Hospital Campus). To the north the parcels across the street and catty-corner are residential uses and zoned R-6 and R-15. These

parcels serve as a transition from commercial to residential. Properties to the east and west are zoned MIC, Medical, Institutional, Cultural.

No buildings are proposed for the site. The project area on the site plan is 2.9 acres. Predevelopment impervious surface is 1.07 acres (37%), post-development impervious surface is 1.65 acres (57%). Predevelopment open space is 1.83 acres (63%) and post-development open space is 1.25 acres (43%).

The proposed site use as a parking lot is a permitted use in the PCD zoning district. This project does meet the requirements for a PCD concerning vehicular access and setback requirements for the district. The proposed parking spaces and lading zones meets or exceeds the requirements. Additional parking is not required, it is a desire to add additional parking and improve the entrance.

Landscaping is required and the proposed Landscape Plan shows the retention of existing trees along the perimeter of the project area with the provision of additional landscaping which exceeds the minimum zoning requirements. Preservation of existing trees is recommended.

A Traffic Impact Analysis was not required for this project.

Photos of the site were shown.

Staff came up with conditions after the feedback from the public. There are no sidewalks along the project area. Sidewalks are required within the PCD. Due to topography of the site and the drop in the grade down to N. Justice Street and 9<sup>th</sup> Avenue, the provision of sidewalks along the project area would result in the loss of exiting trees along N. Justice Street and possibly along 9<sup>th</sup> Avenue due to the impact on root zones of existing trees. Staff recommends a fee in lieu of the sidewalks. Staff recommends the applicant provide mid-block crossings to ensure pedestrian connectivity. Staff recommends utilizing sidewalk fees to construct sidewalks and retaining walls (with tree preservation measures) in partnership with the City at some point in the future.

Stormwater will be managed and feed into the City's existing infrastructure. The plans are being reviewed by the engineering staff.

There are two white oak trees that were discussed with the developer to preserve. The developer will make every effort to save the trees they can. The white oaks are slated to be removed as the roots may become damaged.

Mr. Manley discussed a bio-swell and stated this is not a requirement. Staff conditions are the preservation of existing trees and an appropriate replacement for the trees that are lost. The Dark Sky Initiative could also be included.

Vice-Chair asked if there were any questions for staff.

Mr. Blatt asked why stormwater run-off would not be retained on-site. Mr. Manley stated the storm tech facility is underground. It retains water and meets the code. It does not meet the Comp Plan concerning Natural and Environmental Resources.

Mr. Hanley stated this is a flat asphalt parking lot, why not do a multi-level? Mr. Manley stated he believes cost is the answer to that, but the developer can clarify that.

Vice-Chair asked about including a retaining wall as a condition. Mr. Holloway stated the Board can recommend it to City Council, but the developer and City Council would have to agree on it.

Vice-Chair asked if there were any further questions for staff. There were no further questions.



Jared DeRidder, WGLA stated they have filed a separate petition to close Brown Street. Henderson County owns property on both sides of Brown Street and only a portion of it will be closed. He previously stated in the neighborhood meeting that he witnessed a fire truck get stuck on Brown Street. This is not a safe street and it does not meet any NCDOT requirements.

They will be providing parking closer to Pardee. The question of why not vertical parking is because of the cost. The cost per space in the deck is very high along with the routine maintenance of a deck. This parking lot will provide overflow parking from the deck.

There are pros and cons to the sidewalk along the streets. There is no sidewalk from N. Justice to the high school. They want to be good stewards and save as many trees as they can, and they feel it is best to pay a fee in lieu of the sidewalks. They feel like there are adequate pedestrian facilities and creating another sidewalk on 9<sup>th</sup> Avenue could cause potential problems with the football players going to practice and throwing balls across the street. A retaining wall is also a very expensive solution.

Vice-Chair asked if there were any question for the developer.

Mr. Brown stated there is nothing to justify more surface parking and he feels like this is just creating another heat island. He has been to Pardee plenty of times and there is always enough parking in the deck. Mr. DeRidder stated there is maintenance concerns for the deck. They have to clear the deck to be able to do the maintenance on it. This will be overflow parking for the staff also. Mr. Brown stated the deck could be maintained half a level at a time. This is just creating more heat and asphalt.

Walter Carpenter, Attorney for Pardee Hospital Corporation stated there are difficulties with the way the deck was built. There are structural issues that need to be dealt with from the bottom to the top. They will have to close the whole thing to make some of the repairs. Mr. Brown asked if they have checked with any surrounding churches or other properties about using their parking lots and having a shuttle. Mr. Carpenter stated they hear a lot of complaints about the parking as it is. To move the parking further away would only create more complaints.

Vice-Chair asked how many parking spaces will this add. Mr. Carpenter stated they plan to add 111 spaces. They currently have 361 spaces and after this parking lot is complete, they will have a total of 472 spaces if approved.

Mr. Blatt stated no one wants to walk and a shuttle would not be feasible.

Vice-Chair asked to open up the public comment.

Ken Fitch, 1046 Patton Street stated the loss of the canopy trees is a huge issue. The Tree Board recommendations deserve some consideration. This will have a severe impact as it is replacing pervious surface with impervious surface. He feels the fee in lieu of sidewalks is appropriate as a crosswalk in the middle of 9<sup>th</sup> Avenue could prove to be very dangerous. Will there be a continued use of the Brown Street sidewalk from Fleming Street? There are issues with the City's aging stormwater system, and he feels the bio-swell could be a good solution. He feels this is not benefit to the area.

Mr. DeRidder stated part of the Brown Street sidewalk will remain. The existing stormwater system can handle the extra capacity. Mr. DeRidder explained there will be a covered area for pedestrian access to the deck. He also stated the sub-surface system containers underground will hold the water back and let it drain out slowly. This is used throughout the City. As far as putting in a swell, he is not sure where you would put a flat swell in a deep slope. The swell is not a requirement and is not feasible.

Mr. DeRidder explained frequency of storms and releasing less water into the storm tanks by having a large gravel bed in place to absorb some of the water much like a septic system would. The stormwater system filters into the ground and does go into a detention area.

Ms. Guffey stated there are 222 beds and they will be adding 111 parking spaces and with 351 current spaces and adding another 111 spaces she feels this is a permanent solution to a temporary need. Mr. Carpenter stated even with the parking garage, they get regular complaints about not having enough parking. Ms. Guffey stated with triple the number of spaces there is still a shortage. Mr. Carpenter stated yes.

Mr. DeRidder stated as far as the Dark Sky Initiative goes concerning the lighting, he did not see that requirement in the ordinance. He is committed to having lighting and it will be shielded and meet the ordinance. He did not see the Dark Sky definition in the ordinance. Mr. Manley stated it may not be in the ordinance, but it can be a condition to try and reduce light pollution. Mr. DeRidder stated they would have to study this more. Mr. Manley stated the main issue is that the lights are capped. They can find something that works before the City Council meeting.

Mr. Blatt asked if there were any Dark Sky parking lots in town. Mr. Brown stated no. Mr. Blatt stated this is not feasible for larger parking lots. Mr. Manley stated staff would study this as it seems to be a desire of the Planning Board. They are sensitive to the impact of development. Staff can do a presentation next month.

Mr. Blatt asked about the 35" trees that were requested to be saved. Mr. DeRidder stated the internal trees are 36" and they will try to save them to the greatest extent possible. And that is why they feel a fee in lieu of the sidewalk is better than building the sidewalk. Mr. Carpenter stated the trees won't live if they build the sidewalk. Mr. DeRidder stated building a retaining wall will also kill trees. Mr. Blatt stated it is so steep he does not feel like they can get a sidewalk in there.

Ms. Guffey asked about the sidewalk on the left side of 9<sup>th</sup> Avenue. Mr. Holloway stated there is some question of the right-of-way there. He suggested proceeding with the sidewalk requirement and the applicant can ask for a fee in lieu of the sidewalk.

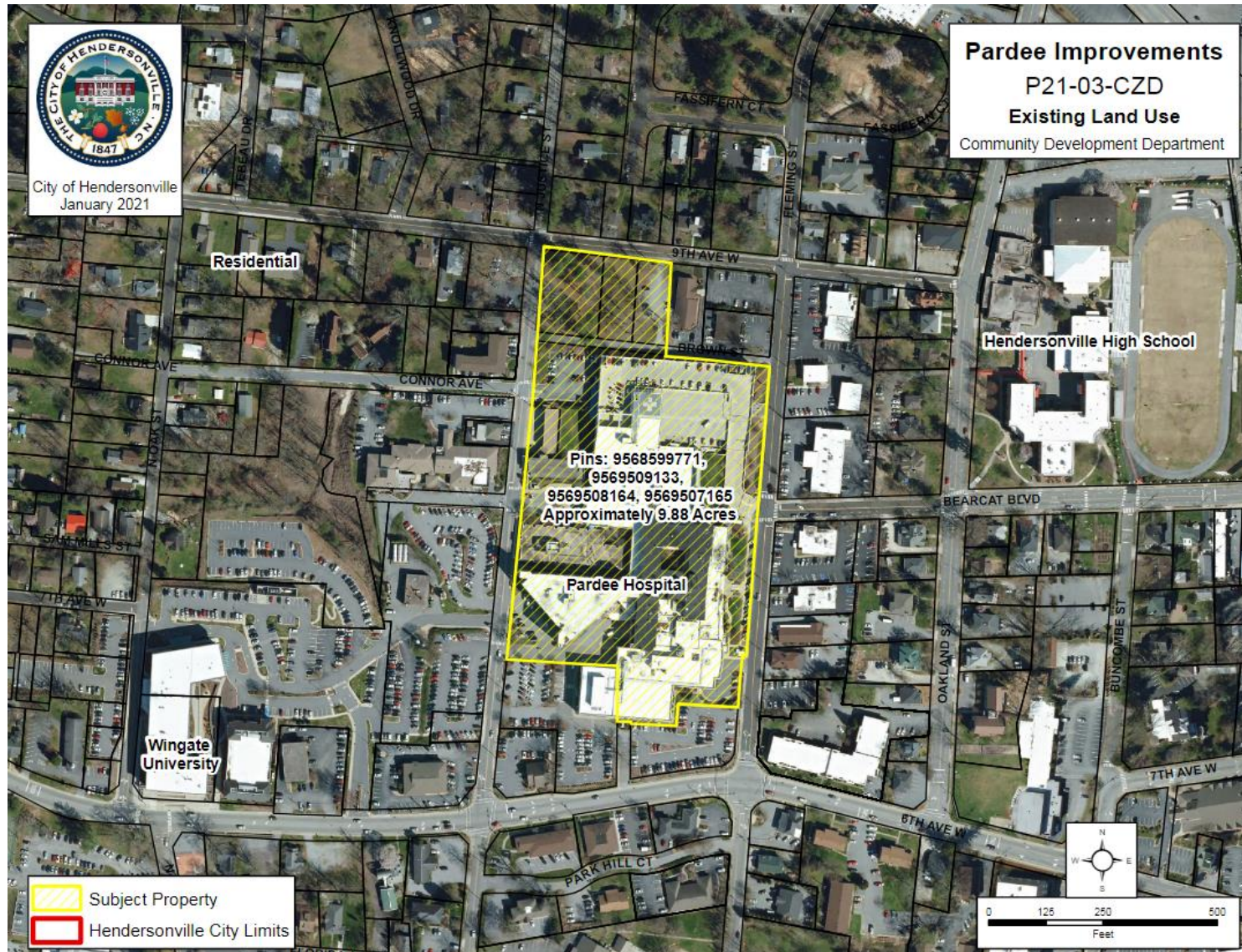
Mr. Manley stated they can maintain the condition for tree preservation. He also discussed the alternative route that was discussed about the sidewalk on top of the hill and the grade. There would also be ADA issues and cost issues for the construction up that hill. It would be very challenging.

***Mr. Brown moved the City Council not adopt an ordinance rezoning the subject property for the following reasons: it is not compatible with the surrounding area such as the neighborhood to the north, it is not in the public interest to lay down another patch of asphalt and the effect it will have on the natural environment converting the three parcels into an impervious surface. Ms. Guffey second the motion which failed with a tie vote of 3 to 3.***

After a three-minute recess, Mr. Holloway got clarification from the City Attorney that a tie vote did fail the motion. Another Board member can make another motion and the motion can be to not recommend approval or denial of the application, but should City Council choose to approve it, the inclusion of the conditions can be recommended.

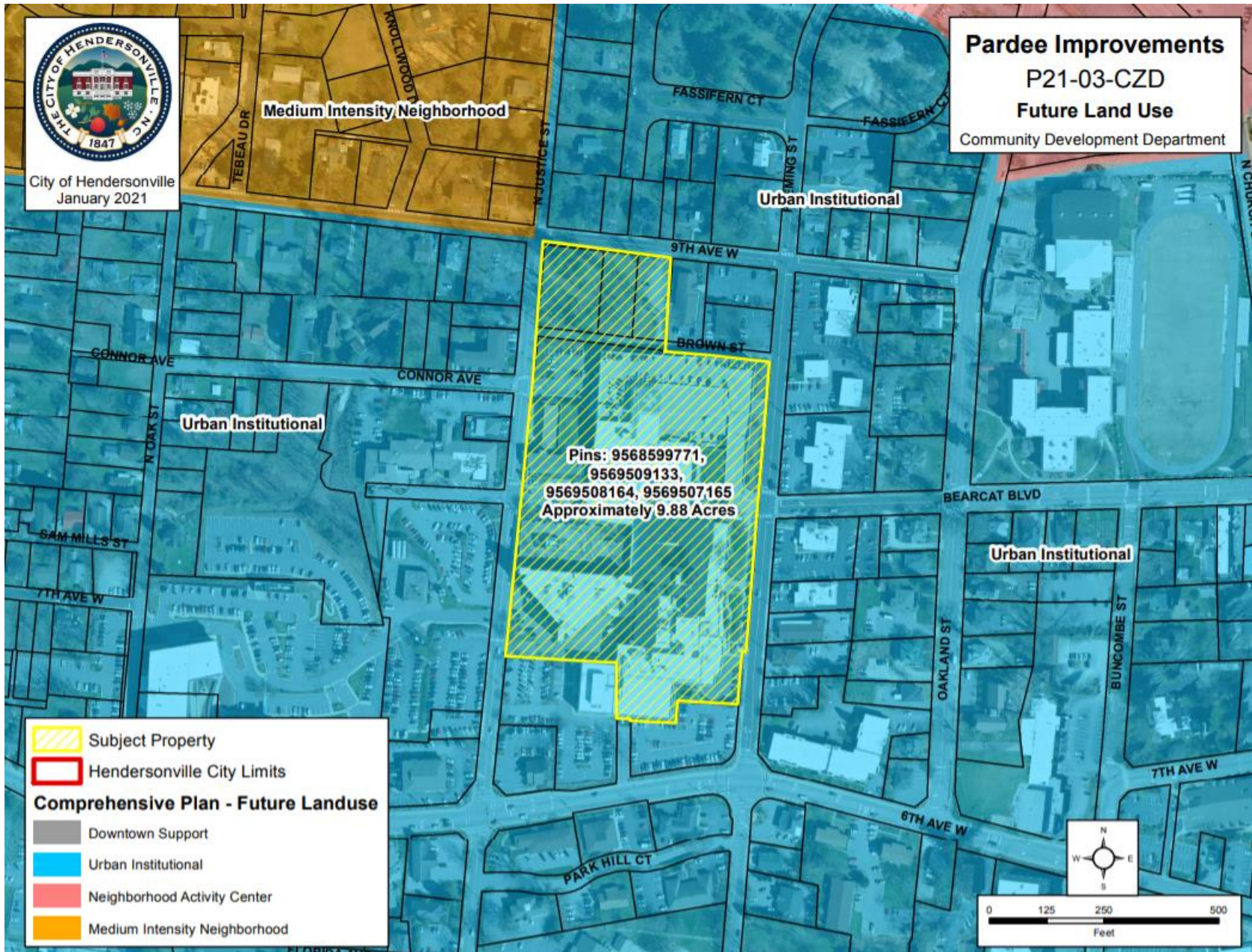
***Ms. Peacock made a motion to recommend neither approval nor denial of the application but should City Council vote to approve the application the three conditions are recommended. Those are 1. The Tree Board recommendations be considered for the preservation or replacement of the trees, 2. Sidewalks be installed per the zoning code requirements and 3. The Dark Sky Initiative be considered. Mr. Blatt seconded the motion which passed unanimously.***

## APPENDIX E – Existing Land Use Map





## APPENDIX F – Future Land Use Map





## **APPENDIX G**

### Planning Report

Neighborhood Compatibility Meeting  
 Application for a Conditional Zoning District  
 Pardee Improvements File # P21-03-CZD  
 Tuesday, January 19, 2021 2:00 p.m.

Tyler Morrow, Planner, convened the compatibility meeting at 2:00 pm in the Council Chambers of City Hall. Approximately three application representatives and three City staff were in attendance. The follow attended:

<b>Name</b>	<b>Address</b>	<b>Name</b>	<b>Address</b>
Jared DeRidder (app)	WGLA – 5 <sup>th</sup> Avenue		
Walter Carpenter, Attorney (app)	Pardee		
Craig Franks (app)	Pardee		
Tyler Morrow	Staff		
Terri Swann	Staff		
Matthew Manley	Staff		
Ken Fitch	Public		
Lurah Lowery	Media		

Mr. Morrow opened the meeting explaining this is the first step in a three-step process. He explained the conditional rezoning process adding anyone who received notice of this meeting would receive notice of the City Council Public Hearing. Minutes of this meeting will be forwarded to Planning Board and City Council. Mr. Morrow said the project will go before the Planning Board in February and City Council will hear the project in March. Mr. Morrow stated this meeting is for the neighbors to learn about the project and they should focus on the compatibility of the project in the neighborhood. This is a virtual meeting and Mr. Morrow explained the process and the steps to participate in the meeting. This is an informal meeting so state your name and address before making any comments as minutes of this meeting are being taken.

Mr. Morrow stated the property is currently zoned MIC, Medical, Institutional and Cultural and PCD, Planned Commercial Development. The proposed rezoning is PCD CZD, Planned Commercial Development Conditional Zoning District. The site plan shows parking and improvements to the front of the hospital and the removal of one building. Jared DeRidder with WGLA is here to give a presentation of the project.

Jared DeRidder, WGLA stated several years ago the Emergency Services was relocated to Asheville Highway and therefore they plan to remove the building that was used for that. The entrance to the hospital bottle necks at times and they are planning to improve the entrance to the hospital. Mr. DeRidder pointed out the exit lane on N. Justice Street and showed how that will improve it. Once they remove the building, they will add much needed parking. They have filed a separate application for the closing of a portion of Brown Street. They plan to add 80 spaces to the new parking lot. They will also add stormwater and create pedestrian improvements to create a better access to the hospital.

Mr. Morrow stated they will hear the live comments. He explained the raise hand feature and asked each person to state their name and address for the record.

Ken Fitch, 1046 Patton Street stated Pardee Hospital is a primary institution in the city and county and the community cares deeply about it. When the parking garage was built, it was asked why it wasn't built larger and now here we are. Is this parking project part of the master plan? The site plan shows two access points on Fleming Street and N. Justice Street, can they discuss the routing and the flow. Is the additional parking lot for staff or public or both? Will the parking lot be monitored, and will it be used day and night 24/7? Concerning the stormwater, they are replacing major pervious surface with an impervious surface so where will the stormwater runoff flow? This is a major issue, where the water will go, and it will affect the City's infrastructure. Mr. Fitch was concerned with the zoning change to a commercial zoning and the effects it will have. With commercial adjacent to residential there are buffer requirements for this that need to be met. There are also large canopy trees on the site. Will they be retained or removed? The compatibility with the adjacent residential area is a concern. What is the future of Brown Street and will a TIA be offered? The additional traffic on 9<sup>th</sup> Avenue is a concern as this is a highly traveled pedestrian route. Can the applicant comment on how the grade will connect to N. Justice Street?

Mr. DeRidder stated concerning the grade onto N. Justice Street. He witnessed a fire truck once, trying to turn left onto Brown Street and the truck got stuck. Currently the intersection at Brown Street and N. Justice Street does not meet any NCDOT criteria or the city's criteria. They are only closing a portion of Brown Street and there will be two entry points from Justice and Fleming for the garage. The existing connection will stay intact and remain the same. Concerning a TIA, they are not required to do this as they are only providing additional parking and improvements. They do not meet the threshold that would require them to submit a TIA. There will not be much additional traffic. The closing of Brown Street is a separate application and they can give a strong argument as to why it needs to be closed. It is a safety hazard and should be closed. They feel that the project is very compatible with the neighborhood with the law offices, medical offices and other commercial uses in the area. Buffers are not required across the right-of-way but they do plan to submit a detailed landscaping plan to the city. They will keep and maintain any large trees that they can. They will have to remove some of the trees. Mr. DeRidder explained the MIC zoning would permit the parking by right but since they plan to close a portion of Brown Street, they filed a conditional rezoning application for the improvements and the added parking. They have talked with John Connet, City Manager concerning stormwater infrastructure and they know how to release the water into the City's infrastructure correctly and without causing any issues. They have submitted the stormwater plan to the Engineering Department for approval. The parking lot will be used day and night and will be fully lit. GE will supply the lighting and it will look uniform across the Pardee campus. Whether the parking lot is used for staff or the public will be up to Pardee as they will use it as they see fit. This parking lot was not part of the master plan. It would be hard to have this as part of the master plan with all the property that Henderson County and Pardee have acquired. The need for more parking has evolved over time and they are trying to serve the county.

Mr. Fitch stated the security of the parking lot is a big issue. If the parking lot is used at night, there needs to be some measures taken to monitor the parking lot. There is also the issue of the Dark Sky lighting. This lighting should be taken into consideration for the project. There are large, major trees where the parking lot will go and taking them all down will affect the view shed of the residential properties. If there are not many large trees left on

the lot and this will affect the residential community. It should be clear what the plan is for the trees in time for the Planning Board to review it, and this should also be reviewed by the Tree Board. The plan should show how the lot will be accessible to the public and how it will function. Compatibility is an issue as they are altering the landscape of the property.

Mr. DeRidder stated they would address more of the comments at the Planning Board meeting. The security would be addressed by Pardee. They know what the concerns are, and they already have security measures on the campus. He understands the neighbors concerns about the view shed. It is hard to please everyone and yes, they will have to remove trees, but they will have a tree credit for the remaining trees and a planting plan for the ones that are removed.

Mr. Manley stated the Tree Board will review this project on February 2<sup>nd</sup>.

Mr. Morrow stated if anyone is interested in having a copy of the site plan, they will just need to contact the Community Development Department.

Lurah Lowery, a reporter with the Times News, asked if they have a completion timeline. Mr. DeRidder stated they plan to break ground in April and this project will be somewhat phased out so the completion would be by October 2021.

Mr. Morrow asked if anyone else would like to comment. No other comments were made.

Mr. Morrow stated this concludes the meeting. He stated the next step for this project is the Planning Board and everyone that got noticed will be noticed of the Planning Board meeting as well. The property will also be posted with the meeting information on the sign.

With no further comments or questions, Mr. Morrow closed the meeting at 2:30 pm.

## **APPENDIX H – Project Rendering**



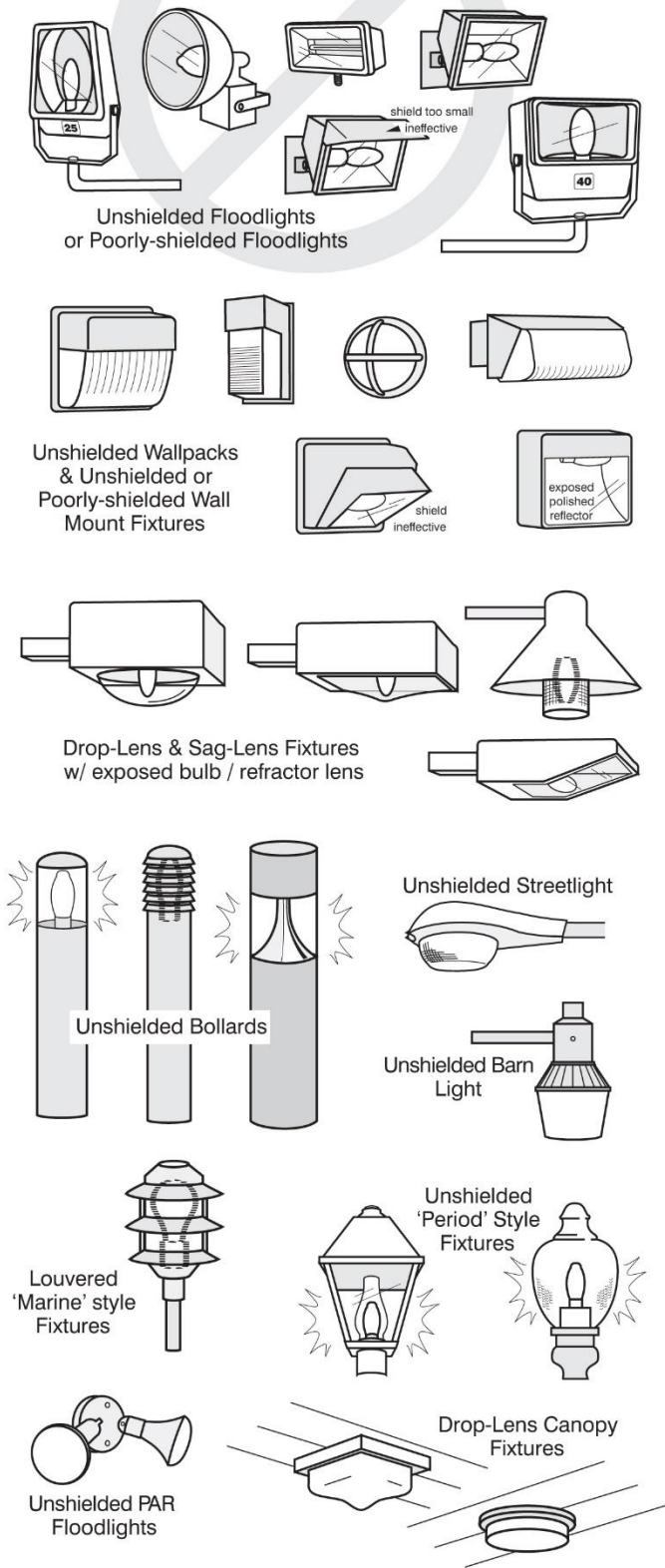


Suggested Lighting from the International Dark Sky Association:  
<https://www.darksky.org/our-work/lighting/lighting-for-citizens/lighting-basics/>

# Examples of Acceptable / Unacceptable Lighting Fixtures

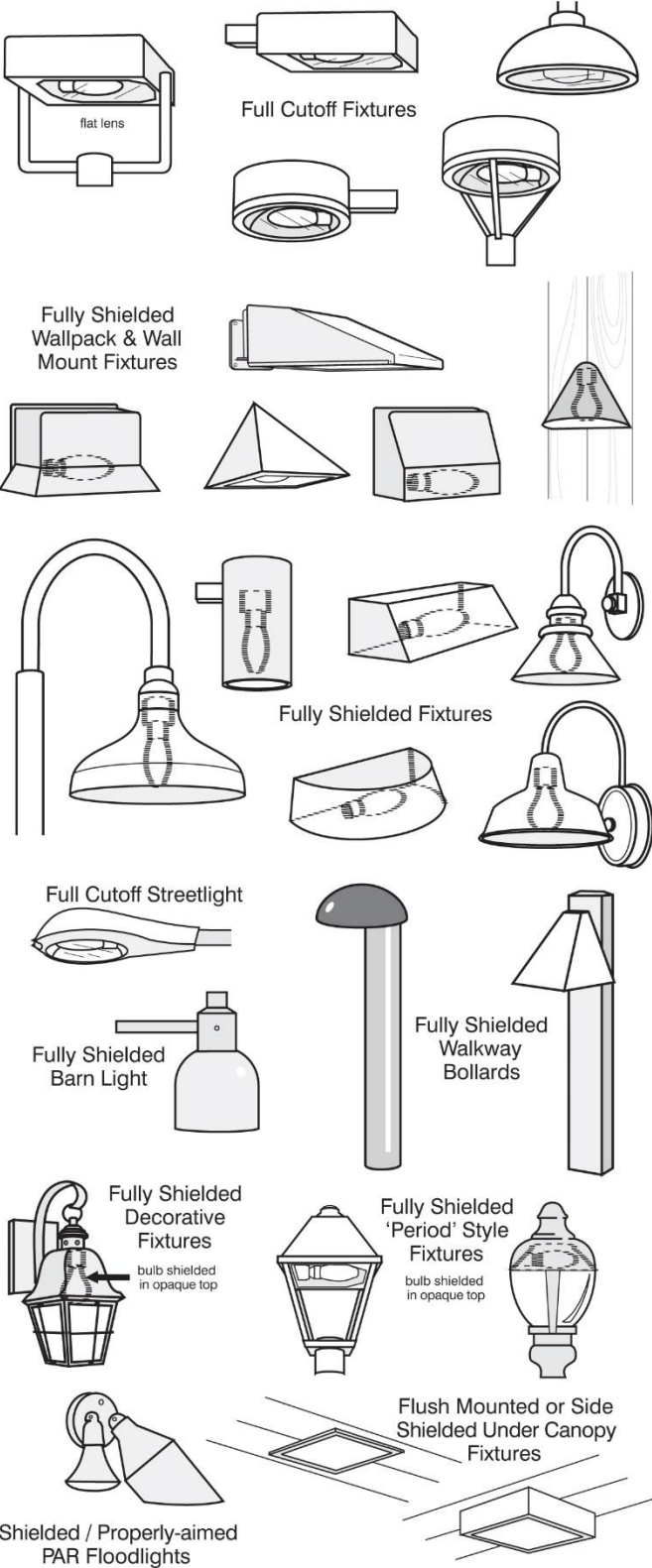
## Unacceptable / Discouraged

Fixtures that produce glare and light trespass



## Acceptable

Fixtures that shield the light source to minimize glare and light trespass and to facilitate better vision at night



**SUGGESTED MOTIONS**  
**Pardee Hospital Entrance & Parking Lot**  
**P21-03 CZD**

**1) For Recommending Approval:**

I move the City Council adopt an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of the subject property from MIC (Medical, Institutional, Cultural) to PCD (Planned Commercial Development Conditional Zoning District), with the following Conditions:

[PLEASE REFERENCE ATTACHED LIST OF USES & CONDITIONS WITH AMENDMENTS AS NECESSARY]

The motion is based on the site plan submitted by the applicant and subject to the limitations and conditions stipulated on the List of Uses and Conditions, finding that the rezoning is consistent with the Comprehensive Plan’s Future Land Use map, and that the rezoning is reasonable and in the public interest for the following reasons:

[PLEASE STATE REASONS; SEE STANDARDS BELOW THAT, PER SECTION 11-4 OF THE CITY ZONING ORDINANCE, SHALL BE CONSIDERED PRIOR TO ADOPTING OR DENYING A ZONING MAP AMENDMENT]

**2) For Recommending Denial:**

I move the City Council deny the application to rezone the subject property for the following reasons:

[PLEASE STATE REASONS; SEE STANDARDS BELOW THAT, PER SECTION 11-4 OF THE CITY ZONING ORDINANCE, SHALL BE CONSIDERED PRIOR TO ADOPTING OR DENYING A ZONING MAP AMENDMENT]

**ZONING ORDINANCE STANDARDS FOR ZONING MAP AMENDMENTS**

1. **Comprehensive Plan Consistency.** Consistency with the Comprehensive Plan and amendments thereto.
2. **Compatibility with surrounding uses.** Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject property.
3. **Changed conditions.** Whether and the extent to which there are changed conditions, trends or facts that require an amendment.
4. **Public Interest.** Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern that benefits the surrounding neighborhood, is in the public interest and promotes public health, safety and general welfare.
5. **Public facilities.** Whether and the extent to which adequate public facilities and services such as water supply, wastewater treatment, fire and police protection and transportation are available to support the proposed amendment.
6. **Effect on natural environment.** Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment including but not limited to water, air, noise, storm water management, streams, vegetation, wetlands and wildlife.



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

<b>SUBMITTER:</b>	Tyler Morrow	<b>MEETING DATE:</b> 3-4-21
<b>AGENDA SECTION:</b>	Council Action,	<b>DEPARTMENT:</b> Community Development Department
<b>TITLE OF ITEM, Presenter Name, Title:</b>	Special Use Permit Amendment: Beacon Commons (P21-10-SUR) – <i>Tyler Morrow, Planner II</i>	

**SUGGESTED MOTION(S):**

**1) For Recommending Approval:**

With regard to the application from Tony Bloemsma of Beacon Common Property LLC for an amendment to a previously approved special use permit based on the record before us, I move Council to make the following findings and conclusions:

- (1) the development is located, designed, and proposed to be operated so as to maintain or promote the public health, safety, and general welfare;
- (2) there are, or will be at the time they are required, adequate public facilities to serve the development;
- (3) the development complies with all required regulations and standards of the Zoning Ordinance and with all other applicable regulations;
- (4) the development is located, designed, and proposed to be operated so as to be compatible with the particular neighborhood in which it is to be located; and
- (5) the development conforms with the general plans for the physical development of the City.

I further move Council to approve the application of Tony Bloemsma of Beacon Common Property LLC for the issuance of an amended special use permit, based on the site plan submitted by the applicant, evidence presented at the hearing, and subject to the conditions stipulated on the list of uses and conditions as well as any other conditions agreed to by the applicant on the record of this proceeding. I further move that staff prepare a written decision for execution by the Mayor, including such additional findings of fact as may be approved by the Mayor, supporting these findings and conclusions made by Council.

[DISCUSS & VOTE]

**2) For Recommending Denial:**

I move City Council to find that the application of Glade Holdings, Inc., does not meet the following requirement(s) of the Zoning Ordinance in that:

[ CHOOSE ONE OR MORE OF THE FOLLOWING]

(1) the development is not located, designed, and proposed to be operated so as to maintain or promote the public health, safety, and general welfare;

(2) there are not, nor will there be at the time they are required, adequate public facilities to serve the development;

(3) the development does not comply with all required regulations and standards of the Zoning Ordinance, namely [SPECIFY REGULATIONS];

(4) the development is not located, designed, and proposed to be operated so as to be compatible with adjacent properties and neighborhoods;

(5) the development does not conform to the general plans for the physical development of the City

I further move Council to deny the application of Tony Bloemsma of Beacon Common Property LLC for the issuance of an amended special use permit, based on the evidence [or lack of sufficient evidence] presented at the hearing. I further move that staff prepare a written decision for execution by the Mayor, including such additional findings of fact as may be approved by the Mayor, supporting these findings and conclusions made by Council.

[DISCUSS & VOTE]

### **SUMMARY:**

The City is in receipt of a Special Use Permit amendment application from Tony Bloemsma of Beacon Common Property LLC for the changing of commercial space on the bottom floor to residential. The site is approximately 3.01 acres and is identified by parcel number 9568-75-7715. The zoning on the property will remain Central Highway Mixed Use Special Use or CMU-SU. Due to the number of units being added and the square footage change between uses, this triggered an amendment to the original Special Use permit. The amendment must go before City Council for their approval. This amendment however did not have to go before the Planning Board or Neighborhood Compatibility meeting.

Central Mix Use does not have a density cap for multi-family development, so the addition of residential units does not trigger any additional zoning review or requirements.

No changes to the exterior footprint or site are proposed.

The applicant is proposing the following uses

- Office
- Retail
- Residential, multi-family

**This hearing will be conducted as a quasi-judicial, evidentiary hearing with only those who can demonstrate standing to participate as a party being allowed full ability to participate. Other persons who wish to present evidence regarding whether or not the proposed amendment meets the**



standards of the ordinance may be allowed to testify at the discretion of City Council. All persons participating will be placed under oath. Only evidence relevant to the question of whether or not the proposed amendment meets the required ordinance standards, presented at the hearing, may be considered by City Council. All persons presenting evidence must attend the hearing in person. Virtual participation will not be permitted.

**BUDGET IMPACT:** \$0

**Is this expenditure approved in the current fiscal year budget?** N/A

**If no, describe how it will be funded.**

N/A

**PROJECT NUMBER:** N/A

**PETITION NUMBER:** P21-10-SUR

**ADDITIONAL PETITION NUMBER:** N/A

**PETITIONER NAME:** Tony Bloemsma of Beacon Common Property LLC

**ATTACHMENTS:**

Staff report, ordinance, list of uses and conditions, 2002 SU staff report, 2002 SU list of uses and conditions and 2002 City Council minutes.

## List of Uses and Conditions- Beacon Commons

### I. Stipulated Uses:

**Only the following uses are authorized for the referenced development:**

- Offices, business, professional and public
- Retail
- Residential dwellings, multi-family

### II. Conditions:

- (1) The following conditions are imposed in order to ensure compliance of the development with the standards (both general and specific) of the City of Hendersonville Zoning Ordinance. These conditions shall be attached to the amended special use permit and must be satisfied prior to issuance of final site plan approval:**

1. No development activities shall take place on the site prior to approval of final plans for the project which shall comply with approved preliminary plans, the conditions agreed to on the record of this proceeding and applicable provisions of the Zoning Ordinance.
2. Final plans for the project must include the following:
  - (A) A lighting plan for the project demonstrating that lighting will be installed in accordance with Section 6-17-4 of the Zoning Ordinance.
  - (B) A stormwater management plan meeting the requirements of Section 6-21 of the Zoning Ordinance [the applicant is advised that failure to meet stormwater requirements will mean that the project cannot be developed pursuant to the preliminary site plan approval];
  - (C) A landscape plan indicating compliance with Article XV, Buffering, Screening, and Landscaping.
  - (D) A letter from the State Erosion and Sedimentation Control Office indicating plans have been filed and approved.
  - (E) A site plan meeting the development standards requirement for CMU Districts contained in Section 5-20 of the Zoning ordinance.
  - (F) The dedication of a greenway easement along Wash Creek, at which time the easement segment is needed to connect to an adjoining segment either to the north or south of the development parcel.
3. The applicant shall comply with all relevant provisions of the Flood

Damage Prevention Ordinance including obtaining a no-rise certificate

CITY COUNCIL  
BEACON COMMONS  
MARCH 4<sup>TH</sup> 2021

## MEMORANDUM

**TO:** Honorable Mayor and City Council

**FROM:** Community Development Department- Planning Division

**RE:** Beacon Commons

**FILE #:** P21-06-SUR

**DATE:** March 4<sup>th</sup>, 2021

## PROJECT DESCRIPTION

The City is in receipt of a Special Use Permit amendment application from Tony Bloemsma of Beacon Common Property LLC for the changing of commercial space on the bottom floor to residential. The site is approximately 3.01 acres and is identified by parcel number 9568-75-7715. The zoning on the property will remain Central Highway Mixed Use Special Use or CMU-SU. Due to the number of units being added and the square footage change between uses, this triggered an amendment to the original Special Use permit. The amendment must go before City Council for their approval. This amendment however did not have to go before the Planning Board or Neighborhood Compatibility meeting.

Central Mix Use does not have a density cap for multi-family development, so the addition of residential units does not trigger any additional zoning review or requirements.

No changes to the exterior footprint or site are proposed.

The applicant is proposing the following uses.

- Office
- Retail
- Residential, multi-family

## PREVIOUSLY APPROVED SPECIAL USE PERMIT

The City Council at their meeting on July 2<sup>nd</sup>, 2002 issued a special use permit authorizing the development of two buildings, each building containing 27,750 sq. ft. of floor area dedicated to residential uses and 13,450 sq. ft. of floor area dedicated to commercial uses for a total of 82,400 sq. ft on a 2.98-acre parcel. The original special use permit had the following permitted uses:

- 1) Hotel
- 2) Professional offices
- 3) Retail sales
- 4) Residential

The Site Plan from the original Special Use Permit application is attached as Appendix D.



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MARCH 4<sup>TH</sup> 2021

**Variance:** The applicant requested a variance from the requirements contained in Section 18-3 Stream Buffer Protection Standards for a reduction of 359 sq. ft. from the required 30-foot stream buffer and 3,639 sq. ft. from the 20-foot transitional area. City Council approved this variance unanimously.

The minutes, staff report and signed list of uses and conditions from this meeting are attached in your packet.

## EXISTING LAND USE & ZONING

The subject property is zoned CMU-SU and currently contains Beacon Commons.

The parcel to the north is zoned CMU, Central Mixed Use and C-1 Central Business. The parcel located to the east are zoned CMU. Parcels to the south are zoned CMU-SU Central Mixed Use Special Use and C-2 Secondary Business. Parcels to the west are zoned CMU. Surrounding land uses and zoning districts are shown on the “Existing Land Use Map” and “Zoning Map” on page Appendix A and B

## COMPREHENSIVE PLAN CONSISTENCY



**Goal LU-11.**  
***Downtown Support: Support the Downtown retail core and create a transition between Downtown Core and adjacent residential neighborhoods.***

**Strategy LU-11.1.**  
**Locations:**

- Area between Downtown Core and Jackson Park
- Transitional areas between Downtown Core and neighborhoods to the north, south, and west

**Strategy LU-11.2.**  
**Primary recommended land uses:**

- Offices
- Single-family attached and multi-family residential
- Live-work units
- Public and institutional uses
- Arts and entertainment establishments
- Structured or underground parking

**Strategy LU-11.3.**  
**Secondary recommended land uses:**

- Retail
- Parks and plazas

**Strategy LU-11.4.**  
**Development guidelines:**

- Minimal front setback
- Rear or limited side parking only
- Façade articulation
- Development and maintenance of traffic calming improvements
- Ground-floor storefronts and/or architectural detailing on parking structures



Example of Downtown Support development

**Goal LU-4.**  
***Natural Resource/Agricultural Areas: Create an interconnected network of green infrastructure that preserves environmentally sensitive areas, protects water resources through low-impact stormwater management, provides floodwater storage, provides community open space and recreational opportunities, and preserves agricultural resources.***

**Strategy LU-4.1.**  
**Locations on the Future Land Use Map:**

- The FEMA 100-year Floodplain
- Slopes greater than 30%
- Areas designated as Protected Ridges, pursuant to the State of North Carolina Mountain Ridge Protection Act of 1983
- Wetlands, as identified by the National Wetlands Inventory
- Existing City and County parks
- Existing cemeteries
- Water and wastewater treatment and storage facilities
- Areas planned for agricultural preservation
- Areas affected by the City's 50-foot stream buffer requirements

**Strategy LU-4.2.**  
**Primary recommended land uses:**

- Open space
- Recreational amenities
- Low-impact stormwater management facilities
- Flood storage
- Agricultural uses

**Strategy LU-4.3.**  
**Secondary recommended land uses:**

- Utilities other than stormwater management
- Single-family attached and detached structures
- Cemeteries



**Strategy LU-4.4.**  
**Development guidelines:**

- Preservation and restoration of natural hydrology
- Encouragement of Low-Impact Development principles, as described under Strategy WR-2.3
- Development of non-motorized pathways to connect neighborhoods, businesses, parks, and regional greenways
- Residential uses limited to one unit per gross acre or less with at least 60% open space



Natural resources in Hendersonville: Oklawaha Greenway (top) wetland (bottom)

CITY COUNCIL  
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MARCH 4<sup>TH</sup> 2021

The subject property is classified as Downtown Support and Natural Resource/Agricultural on the 2030 Comprehensive Plan's Future Land Use Map.

The parcels to the North are classified as Downtown Core and Downtown Support. Parcels to the east are classified as Downtown Support. Parcels to the south are classified as Natural Resource/Agricultural, Neighborhood Activity Center and High Intensity Neighborhood. Parcels to the west are classified as High Intensity Neighborhood.

The 2030 Comprehensive Plan's Future Land Use Map is Appendix D.

### **CHANGES FROM THE ORIGINAL SPECIAL USE PERMIT APPENDIX E**

The applicant is requesting to change 13,546 total square footage of commercial space on the first floor of to residential. He has also proposed to eliminate hotel from the list of uses from the original approved special use permit.

#### **Proposed Uses**

- Office
- Retail
- Residential, multi-family

#### **Buildings**

- Original Special Use Permit
  - 55,500 square feet of residential space
  - 26,900 square feet of commercial space
- Proposed Amended Special Use Permit
  - Addition of 13,546 square feet of residential
  - Subtraction of 13,546 square feet of commercial space.
- Proposed Square footages
  - 69,046 square feet of residential space.
  - 13,354 square feet of commercial space.
- No proposed changes to the building's footprint.

#### **Parking**

Central mixed use requires one space per dwelling unit.

North Building:

- Floor 2 and 3: 8 units total (existing)
- Floor 1: 6 units (proposed)
  - 14 Spaces

CITY COUNCIL  
BEACON COMMONS  
MARCH 4<sup>TH</sup> 2021

South Building:

- Floor 2 and 3: 8 units total (existing)
- Floor 1: 8 units (proposed)
  - 16 Spaces
- Commercial uses to stay:
  - Retail (most restrictive): 1 per each 250 ft<sup>2</sup> of gross floor area. For uses with greater than 40 % gross floor area used for inventory storage not accessible to the general public, the inventory storage area may be calculated at 1 per 500 ft<sup>2</sup>
  - $13,354/250=54$  Spaces
- Required Spaces: 86
- Provided: 107

## ANALYSIS

Section 7-4-10.1 of the Zoning Ordinance states, “no special use permit shall be approved by City Council unless each of the following findings is made.”

- (A) The use or development is located, designed, and proposed to be operated so as to maintain or promote the public health, safety, and general welfare.

**Staff has not identified any issues relating to public health, safety or general welfare.**

- (B) There are, or will be at the time they are required, adequate public facilities to serve the use or development as specified in Section 7-11.

**Water and sewer service is already in use on the site.**

- (C) The use or development complies with all required regulations and standards of the Zoning Ordinance or with variances thereto, if any, granted pursuant to Section 7-4-14, and with all other applicable regulations.

**No new variances are requested. Staff has not identified any zoning regulations that would not be met by this amendment.**

- (D) The use or development is located, designed, and proposed to be operated so as to be compatible with the particular neighborhood in which it is to be located.

**A neighborhood compatibility meeting concerning the original application was held on 20 February 2002. Notice was provided by U.S. mail to record owners of all property situated within 400 feet of the subject property as required by**

CITY COUNCIL  
BEACON COMMONS  
MARCH 4<sup>TH</sup> 2021

**Section 7-4-5 of the Zoning Ordinance.**

**Three property owners/ residents attended the meeting. Questions focused on the :floodplain issue and storage of floodwater. It was the consensus of those in attendance that the proposed development would improve the area.**

**The Special Use Amendment was not required to go back through the Neighborhood Compatibility process.**

- (E) The use or development conforms to the general plans for the physical development of the City as embodied in this Ordinance and in the *Comprehensive Plan* and the *Comprehensive Transportation Plan*.

**The majority of the subject property is classified as Downtown support on the 2030 Comprehensive Plan's future land use map. This classification is intended to "Support the Downtown retail core and create a transition between Downtown Core and adjacent residential neighborhoods."**

**The Downtown Support classification lists multi-family residential, structured or underground parking and office as a primary recommended uses. This classification also lists retail as a recommended secondary use.**

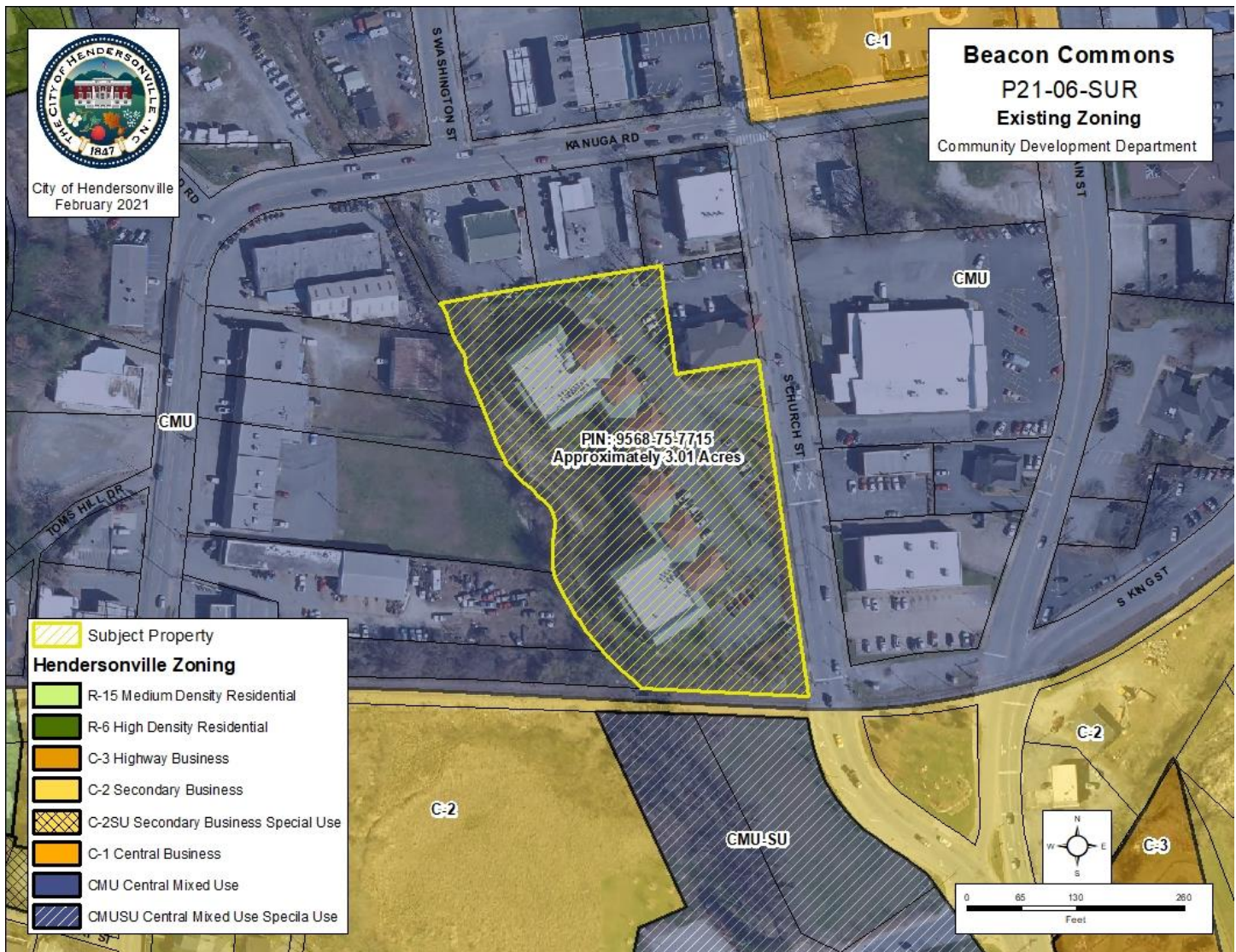


## APPENDIX A



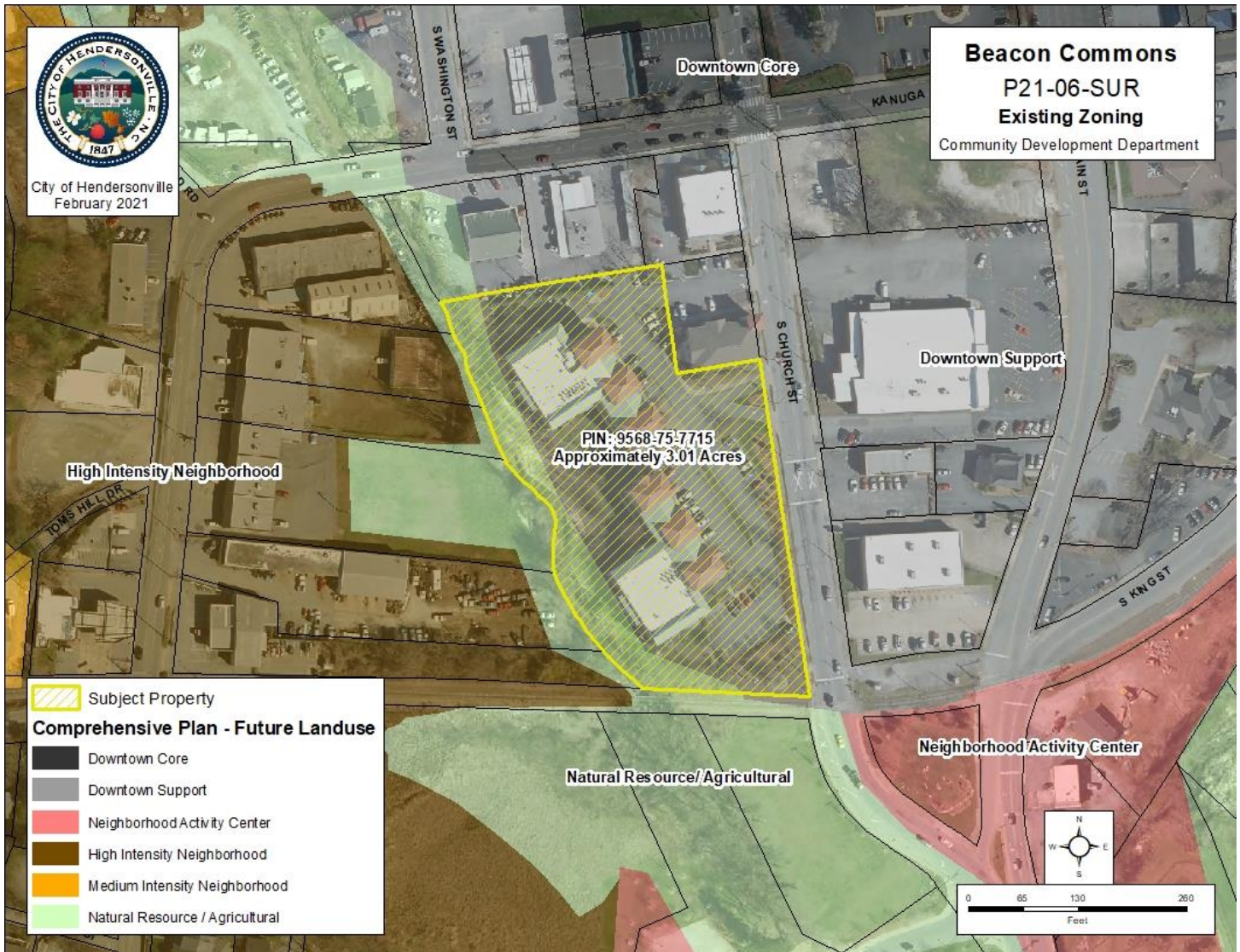


## APPENDIX B



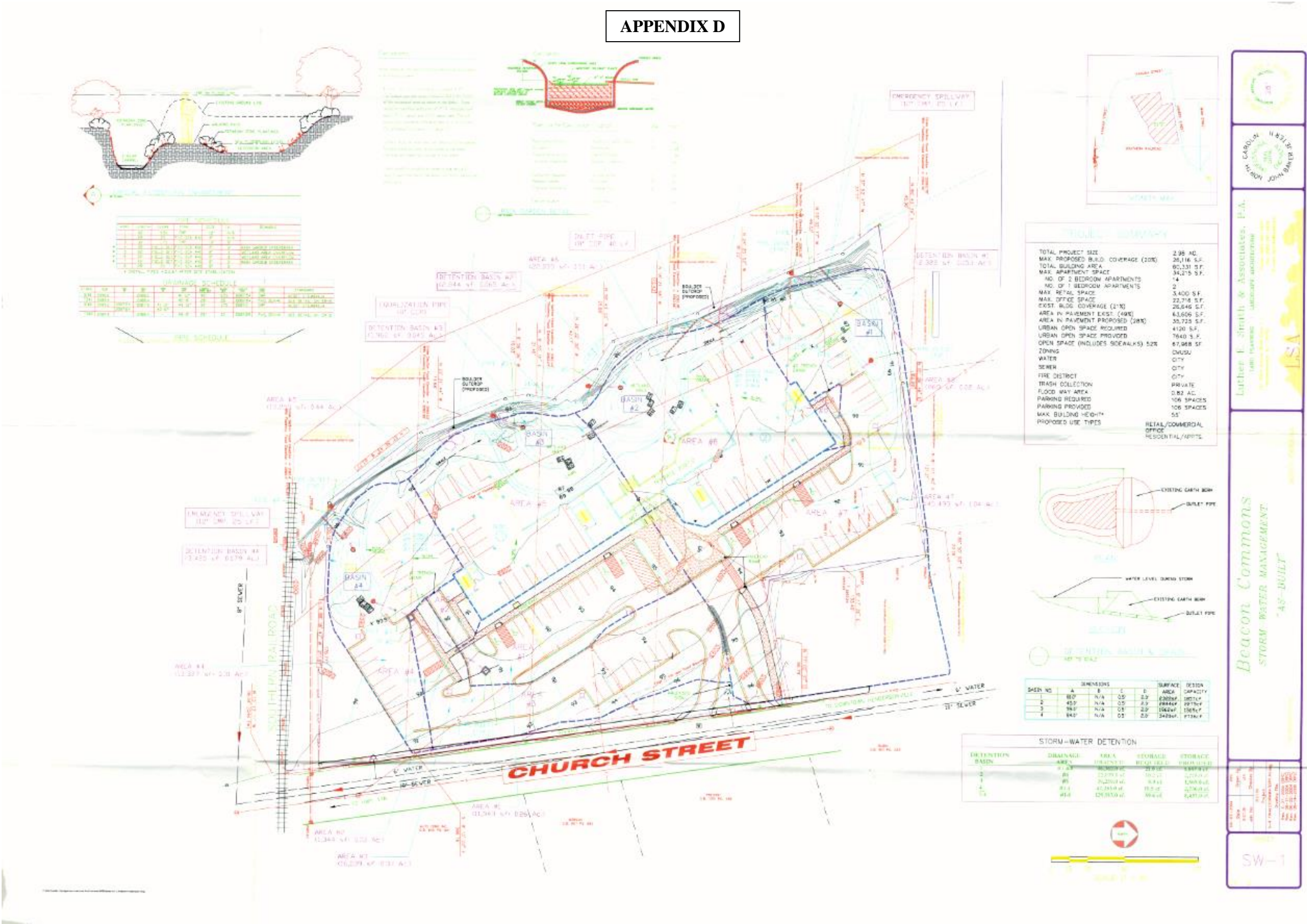


## APPENDIX C





APPENDIX D





Appendix E



SEAL

SEAL

CONSULTANT:

PROJECT TITLE:

BEACON COMMONS,  
FIRST FLOOR CONDO UPFIT  
118 FIFTH AVENUE WEST  
HENDERSONVILLE, NC 28792

Print Date

Description

ISSUED FOR CONST. DATE:

Issue Date

Revision Schedule

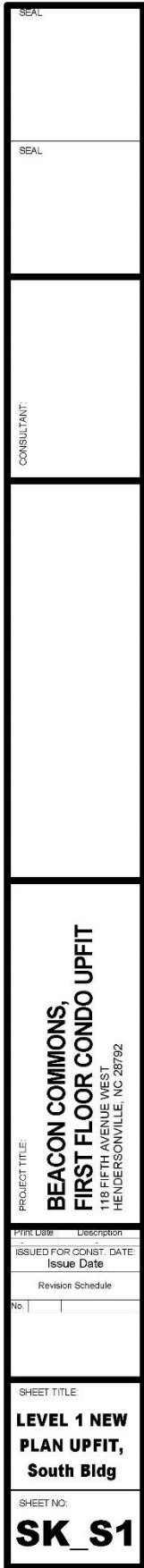
No.

SHEET TITLE:

LEVEL 1 NEW  
PLAN UPFIT,  
North Bldg

SHEET NO:

SK\_N1



## **APPEAL OF DEVELOPMENT DECISIONS**

Section 7-13 of the Zoning Ordinance outlines the process for appeal of development decisions by City Council. The following Sections of the Zoning Ordinance apply specifically to Special Use Review:

**Section 7-13-2 c) Final site plans.** Decisions of the City Council regarding appeals from development decisions concerning applications for final site plan approval may be appealed to the Superior Court by any aggrieved party in the same manner as decisions regarding preliminary site plans set forth in the preceding paragraph.

The validity of the ordinance may be challenged in accordance with North Carolina General Statute Section 160A-364.1.

### **§ 160A-364.1. Statute of limitations.**

A cause of action as to the validity of any zoning ordinance, or amendment thereto, adopted under this Article or other applicable law shall accrue upon adoption of the ordinance, or amendment thereto, and shall be brought within two months

**SUGGESTED MOTIONS – P20-41-CZD: Fleming Street Medical Office Building****1) For Recommending Approval:**

With regard to the application from Tony Bloemsma of Beacon Common Property LLC for an amendment to a previously approved special use permit based on the record before us, I move Council to make the following findings of fact:

- (1) the development is located, designed, and proposed to be operated so as to maintain or promote the public health, safety, and general welfare;
- (2) there are, or will be at the time they are required, adequate public facilities to serve the development;
- (3) the development complies with all required regulations and standards of the Zoning Ordinance and with all other applicable regulations;
- (4) the development is located, designed, and proposed to be operated so as to be compatible with the particular neighborhood in which it is to be located; and
- (5) the development conforms with the general plans for the physical development of the City.

I further move Council to approve the application of Tony Bloemsma of Beacon Common Property LLC the issuance of an amended special use permit, based on the site plan submitted by the applicant and subject to the conditions stipulated on the list of uses and conditions as well as any other conditions agreed to by the applicant on the record of this proceeding.

[IF SECONDED, DISCUSS & VOTE]

**2) For Recommending Denial:**

I move City Council to find that the application of Glade Holdings, Inc., does not meet the following requirement(s) of the Zoning Ordinance in that:

[ CHOOSE ONE OR MORE OF THE FOLLOWING]



(1) the development is not located, designed, and proposed to be operated so as to maintain or promote the public health, safety, and general welfare;

(2) there are not, nor will there be at the time they are required, adequate public facilities to serve the development;

(3) the development does not comply with all required regulations and standards of the Zoning Ordinance, namely [SPECIFY REGULATIONS];

(4) the development is not located, designed, and proposed to be operated so as to be compatible with adjacent properties and neighborhoods;

(5) the development does not conform to the general plans for the physical development of the City.

**Council Member Volk moved approval of the items listed on the consent agenda. A unanimous vote of the Council followed. Motion carried.**

**5. Quasi Judicial Public Hearing – Application from Glade Holdings, Inc. for Special Use Permit Authorizing Development of two Buildings on the Thomas Packing House Property on Church Street.** Mayor Niehoff opened the public hearing and explained the procedures for a quasi-judicial hearing including Council will be considering facts in the case not necessarily opinions, witnesses must be sworn in and their testimony is subject to cross examination. Four persons were sworn in to provide testimony: Mr. Roger Briggs, Mr. Luther Smith, Mr. Gaston Campano and Mr. Ed Hernandez.

Mr. Roger Briggs, Planning Director, addressed the Council requesting Planning Department file #P02-11-SUR be admitted into the record of the proceeding and asked that Council take official notice of the Land Development Plan (LDP), the Thoroughfare Plan and the Zoning Ordinance of the City.

Mr. Briggs reported the City is in receipt of an application from Glade Holdings, Inc., for the issuance of a special use permit authorizing development of two buildings, each containing 27,750 square feet of floor area dedicated to residential uses and 13,450 square feet of floor area dedicated to certain specified commercial uses for a total of 82,400 square feet on a 2.98-acre parcel. He stated in the application, the developer has agreed to limit the property to the following uses: hotel, professional offices, retail sales and residential.

*Existing Land Use & Zoning:* Mr. Briggs stated the lot is zoned CMU Central Mix Use. To the north, west, and east are commercial uses on property zoned CMU. To the south is an abandoned commercial structure on property zoned C-2 Secondary Business.

*Plan Review:* Mr. Briggs reported the application complies with the requirements of Section 7-8-4 of the Zoning Ordinance with two exceptions: 1) There is no preliminary stormwater plan meeting the requirements of Section 6-2. He stated he is waiving the requirement as a final stormwater management plan is required at the time of final site plan review. 2) The site plan does not conform with the requirements of Section 18-3 Stream Buffer Protection Standards. He reported the applicant is requesting a variance of 359 square feet from within the required 30-foot stream buffer and 3,639 square feet within the required 20-foot transitional area. He referred to a letter from the applicant dated May 30, 2002 requesting a variance.

Mr. Briggs reported this development is located within the floodway and the floodway fringe of Wash Creek. Section 18-2-4 of the Zoning Ordinance allows for redevelopment in the floodway and floodway fringe if the applicant can demonstrate compliance with the requirements contained therein. He provided a copy of the applicant's narrative addressing this section. He stated staff is of the opinion the applicant has met this requirement.

*Analysis:* Mr. Briggs explained Section 7-4-4 of the Zoning Ordinance provides "No special use permit shall be approved by City Council unless each of the following findings is made."

1. *The use or development is located, designed, and proposed to be operated so as to maintain or promote the public health, safety, and general welfare.* He stated no public health, safety or general welfare issues have been identified.
2. *There are, or will be at the time they are required, adequate public facilities to serve the use or development as specified in Section 7-11.* He stated existing water and wastewater facilities are adequate to accommodate increased demand associated with this project.
3. *The use or development complies with all required regulations and standards of the zoning ordinance or with variances thereto, if any, granted pursuant to Section 7-4-14 and with all other applicable regulations.* Staff has not identified other regulations or standards of the Zoning Ordinance that appear to be problematic.
4. *The use or development is located, designed, and proposed to be operated so as to be compatible with the particular neighborhood in which it is to be located.* He stated a neighborhood compatibility meeting was held on February 20, 2002. Notice was provided by U.S. mail to record owners of all property situated within 400 feet of the subject property as required. He reported three property owners/residents attended the meeting and questions focused on the floodplain issue and storage of flood water. It was the consensus of those in attendance that the proposed development would improve the area. He provided a copy of the neighborhood compatibility meeting report.
5. *The use or development conforms to the general plans for the physical development of the City as embodied in this chapter and in the Land Development Plan and the Thoroughfare Plan.* He stated the 1980 LDP shows this property classified as secondary commercial and this project appears to be consistent with the LDP. The 1991 Thoroughfare Plan deems Church Street in this vicinity to have adequate roadway and right-of-way widths and stated the project is in compliance with the City's Thoroughfare Plan.

Mr. Briggs brought Council's attention to an amended list of conditions adding: f) the dedication of a greenway easement along Wash Creek, at which time the easement segment is needed to connect to an adjoining segment either to the north or south of the development parcel.

Mayor Niehoff called for proponents of the project to speak. The following addressed the Council:



Luther Smith, landscape architect and planner for the project representing Glade Holdings in their application for a special use permit. He provided the following information and first reviewed a drawing of the existing conditions of the proposed redevelopment project stating the site is the Thomas Packing House property consisting of 2.98 acres and zoned CMU. The property is bordered on the west by Wash Creek, on the east by Church Street, on the north Hot Dog World and to the south the railroad. Of the 2.98 acres, 2.7 acres falls within the 100-year floodplain, and of the 2.7 acres, approximately .8 acres falls within the floodway of Wash Creek. The existing building covers about 19% of the property (25,000 square feet), other impervious surfaces (concrete, asphalt, and gravel) cover about 49% of the site, totaling about 68% of the site is covered by impervious surface, 32% is open space. The property is bisected by a 16-inch sanitary sewer line and it has not been identified exactly where it is located but one manhole may be under the existing building. The property was incrementally developed over the years and used for a packing house and other uses, portions of the property have been filled. A dike up to five feet runs the length of Wash Creek so the property will not be flooded. A portion of the building foundation sits in the edge of the creek. Existing buildings on the site have taken away approximately 62,000 cubic feet of flood storage area. He reviewed a second drawing which contained two structures totaling approximately 80,000 square feet of floor space. The structure has portions of two and three-stories. The first floor is intended to be professional offices or retail sales, and residential on the other floors. The existing grade will be parking under the building and that area will be open. The proposed building coverage is approximately 29% of the site, proposed additional impervious coverage (parking) is approximately 25%, totaling 54% of the site instead of the existing 68%. The additional 14% is an increase in open space and after construction, more pervious space than existing conditions. As part of the open space requirement in CMU, an urban open space area of approximately 4,500 square feet will be provided through a courtyard. The urban open space will have a relationship to the street by an existing sidewalk on Church Street and an entrance that crosses into the open space. 110 spaces of parking are proposed including the parking level under the building. The ground level will not be raised in the back half of the site, the parking area will be open so flood waters can go through it. The center of the property will contain a minimum amount fill. The total building height will not exceed 64 feet. The proposed uses are possibly hotel, retail, professional offices and residential. The amount of each will be determined by market demand. The limit of floor space is based on the number of parking spaces (110). Regarding stormwater and flooding, the open space is being increased by 14% and pervious surface by 24%. By removing the buildings and leaving the ground floor open for parking, this will add back about 41,650 cubic feet of flood storage. He reviewed another drawing of the proposed project stating the existing dike will be removed and an area along the creek may be utilized for walking trails and part of the greenway system. Excavation is proposed for an area to create a wetland and flood storage area and a mid-level floodplain. A building will be constructed on the existing grade with parking on the ground floor and the elevation will continue to rise toward Church Street. He pointed out the area for the creation of a mid-level flood plain for stormwater storage and potential wetland area. Two other areas will be excavated for stormwater storage. With the increase in pervious surface, the actual run off from the site has been reduced from approximately 18 cubic feet/second to approximately 16 cubic feet/second. He provided a preliminary plan for the proposed buildings pointing out the parking level (for parking), first floor proposed for a colonnade or walkway for entrance to the offices, etc., the second floor may be used for residential or professional offices and the other floor for residential space. An elevator corridor will serve the parking and lower levels. Regarding protection of the stream corridor, he stated currently with the dike along Wash Creek there is almost no buffer with the exception of a few trees. He pointed out the 30-foot buffer area. A small portion of the building designated for parking extends into the buffer area and they are requesting a variance of 359 square feet. He pointed out the 20-foot transitional zone takes in portions of the parking area of both buildings in the amount of approximately 3,600 square feet. While losing some of the buffer zone, they are more than offsetting the area being lost by streambank restoration, a wetland area and stormwater storage area. They chose to put access on the far north end of the site so a number of cars may be stacked if needed. The Planning Board expressed some concerns about traffic on Church Street and they discussed an acceleration lane, splitting the entrance, etc. He met with NCDOT to hear their concerns. NCDOT prefers a single entrance and asked that the radius' be widened to allow easy turning in and out. Mr. Green did not support an acceleration lane but did not express any other problems with the proposal. Original plans indicated a divided entrance and there were concerns from the Fire Chief about adequate width for fire trucks and emergency vehicles. He proposed one uniformly wide entrance with textured pavement. There will be signage indicating right turns only out of the project. Church Street can handle the additional traffic. No one expressed a desire to cross examine Mr. Smith.

Mr. Gaston Campano, Glade Holdings, Inc., addressed the Council asking for questions they may have.

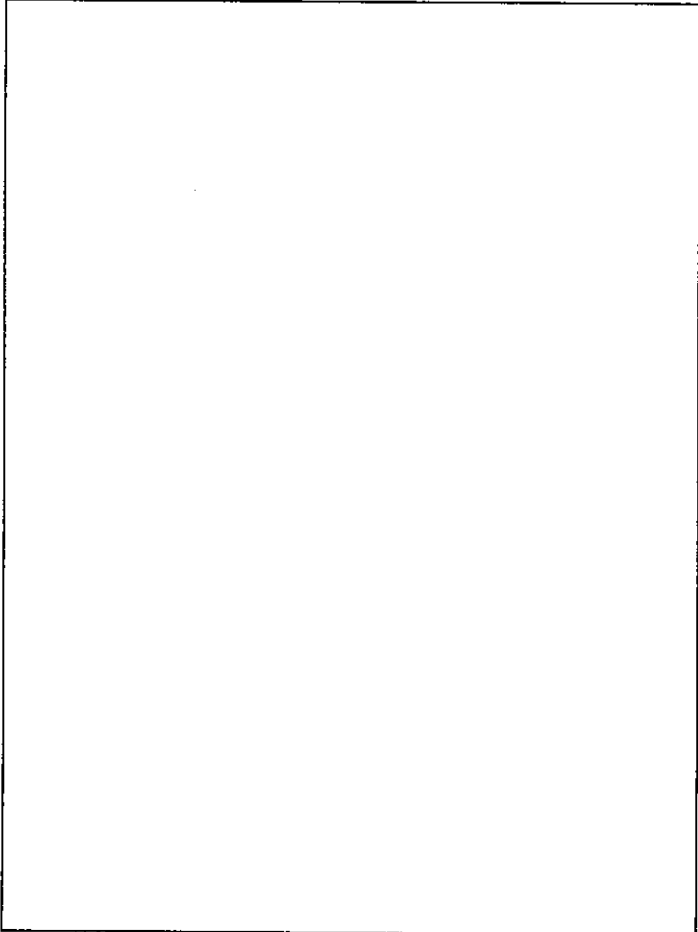
No one else expressed a desire to speak in favor of the proposed project nor in opposition to it. The public hearing was closed at 6:30 p.m.

In discussion, Mayor Pro Tem Padgett asked if the parking area will be pervious surface. Mr. Smith responded that has not been addressed but it could possibly be a pervious-type asphalt. Council Member Stephens commended the developer and Luther Smith for the proposed plan stating it is sensitive to all requirements. She encouraged the consideration of pervious materials for the parking area. Other Council members supported the commendation. Mayor Niehoff commented that being open to suggestions allows improvements to property. He stated the Council will continue to look at ways to make the stream buffer ordinance more flexible and encourage development which improves property. He recommended the granting of the requested variances. Council Member Stephens also commented the project will help raise the real estate values in that area and will encourage others to develop the area. Mayor Pro Tem Padgett commented this is a challenging site and the developer has done a good job improving the flood situation.

She stated she would prefer less parking in front but this project will serve as a model to other developers in the area. She stated the applicant was challenged by the Planning Board on several issues which have been addressed.

**With regard to the request of Glade Holdings, Inc. for a variance from the requirements contained in Section 18-3 Stream Buffer Protection Standards for a reduction of 359 square feet from the required 30-foot stream buffer and 3,639 square feet from the 20-foot transitional area, Council Member Volk moved City Council to find that a literal enforcement of such requirements will result in practical difficulty or unnecessary hardship and that the granting of the requested variance will not result in a development which would violate the findings of fact required by Section 7-4-4 of the Zoning Ordinance. Consequently, she moved Council to grant the requested variance. The Council voted unanimously. Motion carried.**

Mayor Niehoff asked Mr. Campano if he has seen the amended list of conditions and if he agreed the conditions will be met. Mr. Campano responded yes.



**With regard to the application from Glade Holdings, Inc. for a special use permit based on the record before the Council, Council Member Volk moved Council to make the following findings of fact required by Section 7-4-4: 1) the development is located, designed, and proposed to be operated so as to maintain or promote the public health, safety, and general welfare; 2) there are, or will be at the time they are required, adequate public facilities to serve the development; 3) the development complies with all required regulations and standards of the Zoning Ordinance and with all other applicable regulations; 4) the development is located, designed, and proposed to be operated so as to be compatible with the particular neighborhood in which it is to be located; and 5) the development conforms with the general plans for the physical development of the City. She further moved Council to approve the application of Glade Holdings, Inc. for the issuance of a special use permit, based on the site plan submitted by the applicant and subject to the conditions stipulated on the document entitled "Application of Glade Holdings, Inc.: List of Conditions" as well as any other conditions agreed to by the applicant on the record of this proceeding. A unanimous vote of the Council followed. Motion carried.**

**6. Public Hearing - Consideration of Land Development Plan Revision: two text amendments and two corridor plans.** Mr. Briggs addressed the Council explaining this project began in March 2001 when an ad hoc committee was appointed by Mr. Bill O' Cain, Planning Board Chair, in conjunction with Mayor Niehoff, to undertake the task of revising the City's Land Development Plan by focusing on three specific areas: Signal Hill Road, U.S. Highway 64 East and Old Spartanburg Road. He stated the Land Development Plan Revision Committee was chaired by Council Member Stephens (who was a member of the Planning Board at that time) and the remaining members of the Committee are: Jeff Egolf, Ken Gaylord, Bill McKibbin, Bill O'Cain, Erica McArthur Thompson and John Sheiry.

Mr. Briggs explained in preparing the corridor plans, it became evident that some mechanism would be necessary to put the amendments into effect. He stated the Committee developed the "Corridor Plan" text amendment to the LDP which recognizes the level of detail for corridor plans is much greater than is



CITY COUNCIL  
BO THOMAS PACKING HOUSE  
20 JUNE 2002  
PAGE 1

## MEMORANDUM

**TO:** Honorable Mayor and Members of City Council  
**FROM:** Susan Anne Cox, City Planner  
**RE:** Bo Thomas Packing House Property (File No. PO2-11-SUR); Application for Special Use Permit  
**DATE:** 20 June 2002

### QUASI-JUDICIAL HEARING

#### PROJECT DESCRIPTION

The City is in receipt of an application from Glade Holdings, Inc., for the issuance of a special use permit authorizing development of two buildings, each containing 27,750 sq. ft. of floor area dedicated to residential uses and 13,450 sq. ft. of floor area dedicated to certain specified commercial uses for a total of 82,400 sq. ft. on a 2.98-acre parcel. In the application, the developer has agreed to limit the property to the following uses: hotel, professional offices, retail sales and residential.

#### EXISTING LAND USE & ZONING

The lot is zoned CMU Central Mix Use. To the north, west, and east are commercial uses on property zoned CMU. To the south is an abandoned commercial structure on property zoned C-2 Secondary Business.

#### PLAN REVIEW

The application complies with the requirements of Section 7-8-4 of the Zoning Ordinance with two exceptions:

- (1) there is no preliminary stormwater plan meeting the requirements of Section 6-2;
- (2) the site plan does not conform with the requirements of Section 18-3 Stream Buffer Protection Standards.

The Planning Director, pursuant to authority granted him by Section 7-8-4 of the Zoning Ordinance, has waived the requirement for a conceptual stormwater plan. A final stormwater management plan is required at the time of final site plan review.

CITY COUNCIL  
BO THOMAS PACKING HOUSE  
20 JUNE 2002  
PAGE 2

The applicant is requesting a variance of 359 sq. ft. from within the required 30-foot stream buffer and 3,639 sq. ft. from within the required 20-foot transitional area. Please refer to the attached letter dated May 30, 2002 requesting a variance.

This development is located within the floodway and the floodway fringe of Wash Creek. Section 18-2-4 of the Zoning Ordinances allows for re-development in the floodway and floodway fringe if the applicant can demonstrate compliance with the requirements contained therein. A copy of the applicant's narrative addressing this section is attached to this memorandum. Staff is of the opinion the applicant has met this requirement.

#### ANALYSIS

Section 7-4-4 of the Zoning Ordinance provides "No special use permit shall be approved by City Council unless each of the following findings is made."

- (1) The use or development is located, designed, and proposed to be operated so as to maintain or promote the public health, safety, and general welfare.

**No public health, safety or general welfare issues have been identified.**

- (2) There are, or will be at the time they are required, adequate public facilities to serve the use or development as specified in Section 7-11.

**Existing water and wastewater facilities are adequate to accommodate increased demand associated with this project.**

- (3) The use or development complies with all required regulations and standards of the zoning ordinance or with variances thereto, if any, granted pursuant to Section 7-4-14 and with all other applicable regulations.

**Staff has not identified other regulations or standards of the Zoning Ordinance that appear to be problematic.**

- (4) The use or development is located, designed, and proposed to be operated so as to be compatible with the particular neighborhood in which it is to be located.

**A neighborhood compatibility meeting concerning the project was held on 20 February 2002. Notice was provided by U.S. mail to record owners of all property situated within 400 feet of the subject property as required by Section 7-4-5 of the Zoning Ordinance.**

**Three property owners/ residents attended the meeting. Questions**

CITY COUNCIL  
BO THOMAS PACKING HOUSE  
20 JUNE 2002  
PAGE 3

**focused on the floodplain issue and storage of floodwater. It was the consensus of those in attendance that the proposed development would improve the area. A copy of the neighborhood compatibility meeting report is attached to this memorandum.**

- (5) The use or development conforms to the general plans for the physical development of the City as embodied in this chapter and in the Land Development Plan and the Thoroughfare Plan.

**The 1980 Land Development Plan shows this property classified as Secondary Commercial. This project appears to be consistent with the Land Development Plan. The 1991 Thoroughfare Plan deems Church Street in this vicinity to have adequate roadway and right-of-way widths. The project is in compliance with the City's Thoroughfare Plan.**

CITY COUNCIL  
BO THOMAS PACKING HOUSE  
20 JUNE 2002  
PAGE 4

## SUGGESTED MOTIONS

### Variance

#### Stream Buffer

**Approval:** With regard to the request of Glade Holdings Inc. for a variance from the requirements contained in Section 18-3 Stream Buffer Protection Standards for a reduction of 359 sq. ft. from the required 30-foot stream buffer and 3,639 sq. ft. from the 20-foot transitional area, I move City Council to find that a literal enforcement of such requirements will result in practical difficulty or unnecessary hardship and that the granting of the requested variance will not result in a development which would violate the findings of fact required by Section 7-4-4 of the Zoning Ordinance.

Consequently, I move Council to grant the requested variance.

[IF SECONDED, DISCUSS & VOTE]

**Denial:** With regard to the request of Glade Holdings Inc. for a variance from the Stream Buffer Protection Standards contained in Section 18-3 of the Zoning Ordinance, I move City Council to find

- (1) that the applicant has not demonstrated that a literal enforcement of such requirements will result in practical difficulty or unnecessary hardship

[or]

- (2) that the granting of the requested variances will result in a development which would violate the following finding(s) of fact required by Section 7-4-4 of the Zoning Ordinance: [STATE SPECIFIC FINDING(S) & REASONS].

Consequently, I move Council to deny the requested variance.

[IF SECONDED, DISCUSS & VOTE]

### Special Use Permit

**Approval:** With regard to the application from Glade Holdings, Inc. for a special use permit based on the record before us, I move Council to make the following findings of fact required by Section 7-4-4:



CITY COUNCIL  
BO THOMAS PACKING HOUSE  
20 JUNE 2002  
PAGE 5

- (1) the development is located, designed, and proposed to be operated so as to maintain or promote the public health, safety, and general welfare;
- (2) there are, or will be at the time they are required, adequate public facilities to serve the development;
- (3) the development complies with all required regulations and standards of the Zoning Ordinance and with all other applicable regulations;
- (4) the development is located, designed, and proposed to be operated so as to be compatible with the particular neighborhood in which it is to be located; and
- (5) the development conforms with the general plans for the physical development of the City.

I further move Council to approve the application of Glade Holdings, Inc. the issuance of a special use permit, based on the site plan submitted by the applicant and subject to the conditions stipulated on the document entitled "Application of Glade Holdings, Inc.: List of Conditions" as well as any other conditions agreed to by the applicant on the record of this proceeding.

[IF SECONDED, DISCUSS & VOTE]

**Denial:** I move City Council to find that the application of Glade Holdings, Inc., does not meet the following requirement(s) of Section 7-4-4 of the Zoning Ordinance in that:

[CHOOSE ONE OR MORE OF THE FOLLOWING]

- (1) the development is not located, designed, and proposed to be operated so as to maintain or promote the public health, safety, and general welfare;
- (2) there are not, nor will there be at the time they are required, adequate public facilities to serve the development;
- (3) the development does not comply with all required regulations and standards of the Zoning Ordinance, namely [SPECIFY REGULATIONS];
- (4) the development is not located, designed, and proposed to be operated so as to be *compatible with adjacent properties and neighborhoods*;

CITY COUNCIL  
BO THOMAS PACKING HOUSE  
20 JUNE 2002  
PAGE 6

*(5) the development does not conform to the general plans for the physical  
development of the City.*

IN RE: Glade Holdings, Inc. (P02-11-SUR)

### **List of Conditions**

**1. Must Be Satisfied Prior to Issuance of Special Use Permit:**

None.

**2. May Be Attached to Special Use Permit and Satisfied Prior to Issuance of a Zoning Compliance Permit:**

- (1) No development activities shall take place on the site prior to approval of final plans for the project which shall comply with approved preliminary plans, the conditions agreed to on the record of this proceeding and applicable provisions of the Zoning Ordinance.
- (2) Final plans for the project must include the following:
  - (A) A lighting plan for the project demonstrating that lighting will be installed in accordance with Section 6-17-4 of the Zoning Ordinance;
  - (B) A stormwater management plan meeting the requirements of Section 6-21 of the Zoning Ordinance [the applicant is advised that failure to meet stormwater requirements will mean that the project can not be developed pursuant to the preliminary site plan approval];
  - (C) A landscape plan indicating compliance with Article XV, Buffering, Screening, and Landscaping;
  - (D) A letter from the State Erosion and Sedimentation Control Office indicating plans have been filed and approved.
  - (E) A site plan meeting the development standards requirement for CMU District as contained in Section 5-20 of the Zoning ordinance.
  - (F) The dedication of a greenway easement along Wash Creek, at which time the easement segment is needed to connect to an adjoining segment either to the north or south of the development parcel.
- (3) The applicant shall comply with all relevant provisions of the Flood Damage Prevention Ordinance including obtaining a no-rise certificate

IN RE: Glade Holdings, Inc. (P02-11-SUR)

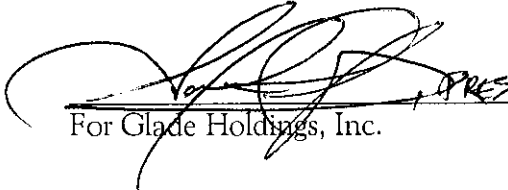
**List of Conditions**

**1. Must Be Satisfied Prior to Issuance of Special Use Permit:**

None.

**2. May Be Attached to Special Use Permit and Satisfied Prior to Issuance of a Zoning Compliance Permit:**

- (1) No development activities shall take place on the site prior to approval of final plans for the project which shall comply with approved preliminary plans, the conditions agreed to on the record of this proceeding and applicable provisions of the Zoning Ordinance.
- (2) Final plans for the project must include the following:
  - (A) A lighting plan for the project demonstrating that lighting will be installed in accordance with Section 6-17-4 of the Zoning Ordinance;
  - (B) A stormwater management plan meeting the requirements of Section 6-21 of the Zoning Ordinance [the applicant is advised that failure to meet stormwater requirements will mean that the project can not be developed pursuant to the preliminary site plan approval];
  - (C) A landscape plan indicating compliance with Article XV, Buffering, Screening, and Landscaping;
  - (D) A letter from the State Erosion and Sedimentation Control Office indicating plans have been filed and approved.
  - (E) A site plan meeting the development standards requirement for CMU District as contained in Section 5-20 of the Zoning ordinance.
  - (F) The dedication of a greenway easement along Wash Creek, at which time the easement segment is needed to connect to an adjoining segment either to the north or south of the development parcel.
- (3) The applicant shall comply with all relevant provisions of the Flood Damage Prevention Ordinance including obtaining a no-rise certificate

  
\_\_\_\_\_  
For Glade Holdings, Inc.





## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

<b>SUBMITTER:</b>	Lew Holloway	<b>MEETING DATE:</b> 3-4-21
<b>AGENDA SECTION:</b>	Choose one, delete others: Council Action	<b>DEPARTMENT:</b> Community Development Department
<b>TITLE OF ITEM, Presenter Name, Title:</b>	Conditional Rezoning: Fleming Street Medical Office Building, P20-41-CZD – <i>Lew Holloway, Community Development Director</i>	

**SUGGESTED MOTION(S): SUGGESTED MOTIONS**

**For Recommending Approval:**

1. I move City Council adopt an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of the subject property from MIC Medical, Institutional, Cultural and MIC-SU Medical, Institutional, Cultural, Special Use to MIC-CZD Medical, Institutional, Cultural Conditional Zoning District, with the following conditions: **[PLEASE REFERENCE THE LIST OF USES & CONDITIONS WITH AMENDMENTS AS NECESSARY]** The motion is based on the site plan submitted by the applicant and subject to the limitations and conditions stipulated on the List of Uses and Conditions, finding that the rezoning is consistent with the Comprehensive Plan's Future Land Use map, and that the rezoning is reasonable and in the public interest for the following reasons:

**[PLEASE STATE REASONS; SEE STANDARDS BELOW THAT, PER SECTION 11-4 OF THE CITY ZONING ORDINANCE, SHALL BE CONSIDERED PRIOR TO ADOPTING OR DENYING A ZONING ORDINANCE AMENDMENT]**

**For Recommending Denial:**

1. I move City Council not adopt an ordinance rezoning the subject property for the following reasons:

[PLEASE STATE REASONS; SEE STANDARDS BELOW THAT, PER SECTION 11-4 OF THE CITY ZONING ORDINANCE, SHALL BE CONSIDERED PRIOR TO ADOPTING OR DENYING A ZONING ORDINANCE AMENDMENT]

**Zoning Ordinance Standards:**

- 1. Comprehensive Plan consistency: whether and the extent to which the proposed amendment is consistent with the Comprehensive Plan and amendments thereto.
- 2. Compatibility with surrounding uses: whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject property.
- 3. Changed conditions: whether and the extent to which there are changed conditions, trends or facts that require an amendment.
- 4. Public interest: whether and the extent to which the proposed amendment would result in a logical and orderly development pattern that benefits the surrounding neighborhood, is in the public interest and promotes public health, safety, and general welfare.
- 5. Public facilities: whether and the extent to which adequate public facilities and services such as water supply, wastewater treatment, fire and police protection and transportation are available to support the proposed amendment.
- 6. Effect on natural environment: whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment including but not limited to water, air, noise, storm water management, streams, vegetation, wetlands and wildlife.

**SUMMARY:** The City is in receipt of a Conditional Rezoning application from Carleton Collins of Carleton Collins Architecture and CCP Fleming LLC for the development of a 3 story 13,536 square foot medical office on approximately 0.86 acres. The subject property is identified as parcel numbers 9569-60-1341 and 9569-60-1454 is currently vacant. The applicant is requesting to rezone the subject property from MIC Medical, Institutional, Cultural and MIC-SU Medical, Institutional, Cultural, Special Use to MIC-CZD Medical, Institutional, Cultural Conditional Zoning District. The Planning Board has recommended 5 conditions for this conditional rezoning application.

**BUDGET IMPACT:** N/A

**Is this expenditure approved in the current fiscal year budget?** N/A

**If no, describe how it will be funded.**

EnterTextHere

**PROJECT NUMBER:** N/A

**PETITION NUMBER:** P20-41-CZD

**ADDITIONAL PETITION NUMBER:** N/A

**PETITIONER NAME:** Carleton Collins (applicant) CCP Fleming LLC (property owner)

**ATTACHMENTS:** Staff report, which includes various appendices

Order:	J000674189	Pubs:	2,3	Rate:	LE
Phone:	(828)697-3003	Class:	0001		
Account:	32002031	Start Date:	02/21/2021		
Name:	ATTN: Angela	Stop Date:	02/28/2021	Payments:	\$ 0.00
Caller:	Angela Reece	Insertions:	4	Balance:	\$ 84.48
Taken By:	S037	Columns:	2	Lines:	47
Schedule:	HTN Times News 2/21 1x, s2/28 1x			Taken On:	02/18/2021
SalesRep	Nancy Mullinax				

#### CONTINUED PUBLIC HEARING NOTICE

Notice is hereby given that the City of Hendersonville City Council will hold a continued public hearing on Thursday, March 4, 2021, at 5:45 p.m. or as soon thereafter as possible, in-person at City Hall on the Second Floor located at 160 Sixth Avenue E, Hendersonville NC to consider the following:

**I. Conditional Zoning District** - Application for a conditional rezoning from Carleton Collins Architecture, PLLC. The applicant is requesting to rezone the subject property, PIN 9569-60-1341 and 9569-60-1454 and located at 903 & 919 Fleming Street, from MIC, Medical, Institutional and Cultural District to MIC CZD, Medical, Institutional and Cultural Conditional Zoning District for the construction of a three-story, 13,536 sq. ft. medical office building.

The Mayor and City Council Members will attend the hearings in person. In-person attendance by the public will also be permitted; however, in compliance with Governor Cooper's Executive Orders and social distancing guidelines, in person attendance of the public will be limited as spacing permits. Public hearing comments will be accepted from those attending in person at the designated time at this meeting. The public may also view and verbally comment during this public hearing live via ZOOM. For security reasons screen sharing will not be allowed. The meeting instructions to join by Zoom will be available on the City's website by visiting <https://www.hendersonvillenc.gov/events-calendar>. Comment period instructions will also be displayed at the appropriate times during the meeting.

Anyone wishing to submit written public comment for public hearings prior to the meeting may visit <https://www.hendersonvillenc.gov/comment> to submit their comment. Written comments must be submitted by **noon on March 4, 2021** to be considered by the City Council. If comments include **photo(s)** or **video** they must be submitted by **8:00 a.m. on March 3, 2021**.

The City of Hendersonville is committed to providing accessible facilities, programs, and services for all people in compliance with the Americans with Disabilities Act (ADA). Should you need assistance or a particular accommodation for this meeting please contact the City Clerk, Angela Reece at 697-3005 no later than 24 hours in advance of the meeting.

2/21, 2/28, 2021

674189

Attention: \_\_\_\_\_ Fax: \_\_\_\_\_

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Ordinance #\_\_\_\_-\_\_\_\_

**AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND THE OFFICIAL ZONING MAP OF THE CITY OF HENDERSONVILLE FOR PARCEL NUMBERS 9569-60-1341 and 9569-60-1454 BY CHANGING THE ZONING DESIGNATION FROM MIC MEDICAL, INSTITUTIONAL, CULTURAL AND MIC-SU MEDICAL, INSTITUTIONAL, CULTURAL, SPECIAL USE TO MIC-CZD MEDICAL, INSTITUTIONAL, CULTURAL CONDITIONAL ZONING DISTRICT**

IN RE: Parcel Numbers 9569-60-1341 and 9569-60-1454- Fleming Street Medical Office Building (File # P20-41-CZD)

**WHEREAS**, the City is in receipt of a Conditional Rezoning application from Carleton Collins of Carleton Collins Architecture and CCP Fleming LLC for the development of a of a 3 story 13,608 square foot medical office on approximately 0.86 acres, and

**WHEREAS**, the Planning Board took up this application at its regular meeting on December 14<sup>th</sup>, 2020; voting 5 to 1 to recommend City Council adopt an ordinance amending the official zoning map of the City of Hendersonville, and

**WHEREAS**, City Council took up this application at its regular meeting on February 4<sup>th</sup>, 2021, and

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Hendersonville, North Carolina:

1. Pursuant to Article XI of the Zoning Ordinance of the City of Hendersonville, North Carolina, the Zoning Map is hereby amended by changing the zoning designation of the following:  
  
Parcel numbers 9569-60-1341 and 9569-60-1454 from MIC Medical, Institutional, Cultural And MIC-SU Medical, Institutional, Cultural, Special Use To MIC-CZD Medical, Institutional, Cultural Conditional Zoning District.
2. Development of the parcel shall occur in accordance with the final site plan requirements of Article VII of the Zoning Ordinance of the City of Hendersonville, North Carolina, and shall be subject to the site limitations and conditions stipulated on the published List of Uses and Conditions.
3. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this 4<sup>th</sup>, day of March 2021.

Attest: \_\_\_\_\_  
Barbara G. Volk, Mayor, City of Hendersonville

\_\_\_\_\_  
Angela L. Reece, City Clerk

Approved as to form:

\_\_\_\_\_  
Angela S. Beeker, City Attorney

STATE OF NORTH CAROLINA, COUNTY OF HENDERSON

I, Amy H. Knight, a Notary Public in Henderson County, State of North Carolina, do hereby certify that Barbara G. Volk in her capacity of Mayor of the City of Hendersonville; Angela L. Reece, in her capacity of City Clerk; and Angela S. Beeker, in her capacity as City Attorney, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

My commission expires:

\_\_\_\_\_  
Amy H. Knight

## LIST OF USES & CONDITIONS:

### Fleming Street Medical Office Building Rezoning (File # P20-41-CZD)

#### I. Stipulated Uses:

**Only the following uses are authorized for the referenced development:**

- Offices, business, professional and public
- Personal services consistent with the purposes of this classification, such as medical & dental labs and clinics, opticians & optical services and prosthetics & orthopedics

#### II. Conditions:

**(1) Shall Be Attached to the Conditional Rezoning and Satisfied Prior to Issuance of Final Site Plan Approval:**

City Initiated Conditions:

1. That the building set-back requirements be reduced from 30' to 10' along the Fleming Street property edge and from 10' to 0' along the 9<sup>th</sup> Avenue property edge. Furthermore, that the building be sited on the 10' Fleming Street setback and the 0' 9<sup>th</sup> Avenue setback accordingly and that the parking be relocated to the side and rear of the site plan.
2. That a stormwater management plan be submitted by the applicant demonstrating compliance with Chapter 24 Article 3: Stormwater Ordinance in the City Code of Ordinances.
3. That site lighting be dark sky compliant.
4. That the existing type B buffer along the western property line of parcel number 956-960-1454 and the existing buffer along the western property line of parcel number 956-960-1341 be preserved during the redevelopment of the site. Furthermore, that this combined existing buffer be supplemented with 5 additional broadleaf canopy trees and 25 evergreen shrubs. All vegetation preserved and planted within this buffer shall be maintained in accordance with Section 15-4 Existing Vegetation of the City's zoning ordinance.

Applicant Initiated Conditions:

5. N/A

**(2) Shall Be Attached to the Conditional Rezoning:**

1. Final plans for the project shall comply with approved plans, the conditions agreed to on the record of this proceeding and all applicable provisions of the Hendersonville Zoning Ordinance and Code of Ordinances.

With their signatures below, Applicant and Property owner indicate their consent to these conditions.

Applicant: Carleton Collins

Property Owner: CCP Fleming LLC

Signature:\_\_\_\_\_

Signature:\_\_\_\_\_

Printed Name:\_\_\_\_\_

Printed Named:\_\_\_\_\_

Date:\_\_\_\_\_

Date:\_\_\_\_\_

Title within LLC:\_\_\_\_\_



## Community Development Staff Report

**TO:** Honorable Mayor and City Council

**FROM:** Community Development Department- Planning Division

**RE:** Fleming Street Medical Office Building Rezoning

**FILE #:** P20-41-CZD

**DATE:** March 4<sup>th</sup>, 2021

### PROJECT DESCRIPTION

The City is in receipt of a Conditional Rezoning application from Carleton Collins of Carleton Collins Architecture and CCP Fleming LLC for the development of a 3 story 13,536 square foot medical office on approximately 0.86 acres. The subject property is identified as parcel numbers 9569-60-1341 and 9569-60-1454 is currently vacant. The applicant is requesting to rezone the subject property from MIC Medical, Institutional, Cultural and MIC-SU Medical, Institutional, Cultural, Special Use to MIC-CZD Medical, Institutional, Cultural Conditional Zoning District. The Planning Board has recommended 5 conditions for this conditional rezoning application.

### PREVIOUSLY APPROVED SPECIAL USE PERMIT

On August 6<sup>th</sup>, 1998, City Council at its regular meeting rezoned the subject property from R-6 High Density Residential to MIC-SU Medical, Institutional, Cultural, Special Use to allow the property owner to operate a professional office or medical facility in the existing single-family structure. The rezoning was approved By City Council with the following conditions: 1) The existing structure to remain subject to renovation and expansion per NC building code. 2) one-way entrance to the rear parking from Fleming Street. 3) one-way exit from rear parking lot from Fassifern Court. 4) No on street parking is specified. 5) the submittal of a storm water management plan that meet the City’s requirements. 6) shall have a sign that does not exceed 30 square feet.

The minutes from the City Council meeting concerning this item is Appendix A in your memo.

### NEIGHBORHOOD COMPATIBILITY

A neighborhood compatibility meeting concerning this application was held on November 24<sup>th</sup>, 2020. Notice was provided by U.S. mail to the owners of record of all property situated within 400 feet of the subject property as required by the Zoning Ordinance.

Several people representing the public attended the meeting virtually. They had questions concerning height of the building, buffering, stormwater runoff and flooding. A copy of the neighborhood compatibility report accompanies this memorandum as Appendix C.

### CHANGES TO THE PLAN BETWEEN NEIGHBORHOOD COMPATIBILITY AND PLANNING BOARD

The applicant submitted an updated site plan on December 3<sup>rd</sup>, 2020. The applicant proposed the revisions after comments received at the Neighborhood Compatibility meeting. The site plan that was presented at Neighborhood Compatibility is listed as Appendix I and Appendix J.

The following changes were made between the November 3<sup>rd</sup> and December 2<sup>nd</sup> submissions:

- 13 Green Giant and 9 Norway Spruce were added to the rear of the property, in addition to the already proposed type B buffer.
- The new plan shows the building 25’ from the rear property line. The previous plan showed the building 20’ from the rear property line.
- The new site plan shows building approximately 2 feet closer to the southern property line.

## PLANNING BOARD

The Planning Board took this matter up at its regular meeting on December 14<sup>th</sup>, 2020. The Planning Board voted 5-1 to recommend City Council adopt an ordinance amending the official zoning map of the City of Hendersonville. Changing the zoning designation of the subject property from MIC Medical, Institutional, Cultural and MIC-SU Medical, Institutional, Cultural, Special Use to MIC-CZD Medical, Institutional, Cultural Conditional Zoning District based on the site plan submitted and subject to the limitations and conditions stipulated on the published list of uses and conditions, finding that the rezoning is consistent with the Comprehensive Plan, and that the rezoning is reasonable and in the public interest.

The list of conditions reviewed and recommended for adoption by the Planning Board are listed below:

1. That the building be relocated on the site plan to sit on the front setback line and that the parking located at the front of the property be relocated to the side and rear of the site plan to conform to the Comprehensive Plan's guidance to use a "minimal front setback" and limit parking to the "rear and side only."
2. That the existing type B buffer along the western property line of parcel number 9569601454 and the existing buffer along the western property line of parcel number 9569601341 be preserved during the redevelopment of the site in accordance with Section 15-4 Existing Vegetation of the City's zoning ordinance.
3. That a stormwater management plan be submitted by the applicant demonstrating compliance with Chapter 24 Article 3: Stormwater Ordinance in the City Code of Ordinances.
4. That site lighting be dark sky compliant.

## TREE BOARD REVIEW

The Tree Board directed Mark Madsen and Pat Christie to evaluate the existing buffers on the site. Mark and Pat are both members of the Tree Board as well as ISA Certified Arborists. Their review comments are below. The tree survey for this project is appendix K. Photos of the current vegetation can be found as appendix L.

"We paid close attention to the request for and intent to provide screening along the west property line. Currently, there is heavy cover with hemlocks, Leyland cypress, bamboo and holly, all in reasonably good condition. The developer stated his intent to preserve as much existing vegetation as possible along the west property line. After walking the site, we were curious whether the landscape designer for the property was even aware of that intent. No existing plantings show as remaining in the new landscape, even though many of them could be quite suitable in the effort to provide vegetative screening.

A retaining wall will obviously be required along the west property line. The plan indicates that but does not indicate the height or length of such a wall. Some desirable existing plantings could be at risk, depending on the addition of much fill soil for final grading."

ZONING ORDINANCE GUIDELINES

Per Section 11-4 of the City’s Zoning Ordinance, the following factors shall be considered prior to adopting or disapproving an amendment to the City’s Official Zoning Map:

1.

**Comprehensive Plan consistency.** Consistency with the Comprehensive Plan and amendments thereto.
2.

**Compatibility with surrounding uses.** Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject property.
3.

**Changed conditions.** Whether and the extent to which there are changed conditions, trends or facts that require an amendment.
4.

**Public interest.** Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern that benefits the surrounding neighborhood, is in the public interest and promotes public health, safety and general welfare.
5.

**Public facilities.** Whether and the extent to which adequate public facilities and services such as water supply, wastewater treatment, fire and police protection and transportation are available to support the proposed amendment.
6.

**Effect on natural environment.** Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment including but not limited to water, air, noise, storm water management, streams, vegetation, wetlands, and wildlife.

Rezoning Request Analysis

EXISTING LAND USE & ZONING

The subject property is currently zoned MIC Medical, Institutional, Cultural and MIC-SU Medical, Institutional, Cultural, Special Use and is currently vacant.

Parcels to the north are zoned MIC-SU, PID, Planned Intuitional Development and R-6. Parcels to the east are zoned MIC, PID-CZD and R-6 and contain Hendersonville High School. Parcels to the south are zoned MIC, and PCD, Planned Commercial Development and contain Pardee Hospital. Parcels to the west are zoned R-6, MIC and R-15, Medium Density Residential. Surrounding land uses and zoning districts are shown in Appendix D “Existing Land Use Map” and Appendix E “Existing Zoning Map”.

COMPREHSIVE PLAN CONSISTENCY

The subject property is classified as Urban Institutional on the 2030 Comprehensive Plan’s Future Land Use Map. The goal of the Urban Institutional classification is to “Create a cohesive, well-defined urban campus for medical and educational institutions, with supportive office, service and residential uses, that is integrated with Downtown.”

The recommended primary and secondary land use in Urban Institutional are as follows:  
Recommended Primary Land Uses:

- Public and institutional uses
- Offices
- Structured or underground parking

Recommended Secondary Land Uses:

- Single-family attached residential
- Multi-family residential
- Live-work units
- Limited retail and services

Development guidelines:

- Similar development standards to Downtown Support

- Minimal front setback
- Rear or limited side parking only
- Façade articulation
- Development and maintenance of traffic calming improvements
- Ground-floor storefronts and/or architectural detailing on parking structures
- Encouragement of neighborhood master-planning that links hospital with offices, services and Downtown
- Development and maintenance of traffic calming improvements

The 2030 Comprehensive Plan’s Future Land Use Map designates all surrounding parcels as Urban Institutional. Neighborhood Activity Center and Medium Intensity Neighborhood classifications are also in the general area of the project. The 2030 Comprehensive Plan’s Future Land Use Map is located in Appendix F.

**PLAN REVIEW: UPDATED FOR MARCH SCHEMATIC SITE PLAN**

The site plan is Appendix G of this memo.

**Buildings**

The site plan shows a three-story 13,608 square foot medical office building.

**Parking Requirements - Table 6-5-2**

The zoning ordinance requires that medical offices provide 1 per each 250 ft<sup>2</sup> of gross floor area.

- $13,608/250=54.432$ 
  - 55 spaces required.
  - 55 spaces provided.

**Traffic Impact Analysis - Section 6-18**

- It was determined that a Traffic Impact Analysis was not necessary for this project. According to the 7<sup>th</sup> edition volume 2 of the Institute of Transportation Engineers trip generation manual the project is not expected to meet either the 100 or more peak-hour trips or the 1,000 or more daily trips thresholds.

**Entrance**

The development would have two points of ingress and egress, one off of Fleming Street and one off of Ninth Ave. West.

**Stormwater/Flood Hazard Area**

The project is disturbing less than an acre, so a stormwater management plan is not a requirement.

**Sidewalks - Section 6-12**

Sidewalks will be provided on all the subject property’s frontages that are not served by an existing sidewalk.

**Landscaping:** ~~The landscaping plan is identified as appendix H~~ The landscaping plan is included as a component of the schematic site plan; including as Appendix G.

The updated site plan is showing the preservation of the existing type B buffer along the western property line of parcel # 956-960-1454 and the existing buffer along the western property line of parcel # 956-960-1341. The applicant has also agreed to supplement and maintain this buffer as described in Condition #4, in the project’s list of uses and conditions. The distance between the retaining wall and the rear property line is 16’.

~~The site plan is showing a type B buffer along the western property line. A type B buffer is required when commercial uses abut a residential zone or use.~~

- ~~• A type B buffer consists of 4 broadleaf canopy tree, 25 evergreen shrubs (4 foot centers) 33 flowering shrubs per 100 linear feet.~~
- ~~• The plan also provides an additional 13 Green Giants and 9 Norway Spruces between the proposed Type B buffer and the proposed rear retaining wall.~~

The updated site plan also provides vehicular use landscaping of 1 tree 2 shrubs for every 4,000 square feet of vehicle use area (VUA). Total VUA is approximately 21,000 sq.ft. requiring 5 tree and 10 shrubs.



~~The site plan provides a buffer from street which is 1 shrub for every 5 feet of VUA that is within 50' of the nearest right of way.~~

The updated site plan shows planting areas which will accommodate the required buffering shrubs for VUA within 50' of the right of way. The required count for the Fleming Street corridor is 40 shrubs.

**6-16-3 Common Open Space Requirements for Non-Residential Developments.:**

- a) At least 10% of the project area shall be devoted to common open space.
- b) Common open space for non-residential developments shall be used for landscaping, lawns, screening or buffering. It may not contain any streets, parking or loading areas, outdoor storage, trash handling, utility or service areas, or areas with impervious surfaces other than sidewalks, recreational facilities, and meeting areas.

**Zoning District Standards - Section 5-10 Medical, Institutional and Cultural Zoning District Classification (MIC)**

- 5-10-3 Dimensional Requirements:
  - Setbacks
    - Front: 30
    - Side: 10
    - Rear: 20
  - Height
    - 50 (No building shall exceed 50 feet in height unless the depth of the front and total width of the side yards required herein shall be increased by one foot for each two feet, or fraction thereof, of building height in excess of 50 feet.)
    - Building is proposed to be 3 story.

**Staff Report Recommendations**  
**STAFF COMMENTS**

City Council members can find staff comments relating to the consistency of the proposed site plan with the guidance offered in the City’s Comprehensive Plan and Zoning Ordinance in appendix B. Staff will also include recommended conditions for approval here, alongside references to supporting comprehensive plan and ordinance standards for Council’s consideration. City Council may approve the rezoning request with or without conditions or deny the rezoning request.

**Planning Board/Staff Recommended Rezoning Conditions:** These conditions are included in the attached suggested motion. They can be included or removed at Council’s discretion and upon agreement by the parties involved.

The following (5) conditions are suggested for consideration to address guidance included in the Comprehensive Plan and Zoning Ordinance.

- That the building be relocated on the site plan to sit on the front setback line and that the parking located at the front of the property be relocated to the side and rear of the site plan to conform to the Comprehensive Plan’s guidance to use a “minimal front setback” and limit parking to the “rear and side only.”
  - Set-back in MIC is 30’; further flexibility shall be offered by allowing this required set-back to be measured from either the back of the existing curb, the property line or anywhere in between those two features of the site survey.
- That the existing type B buffer along the western property line of parcel number 9569601454 and the existing buffer along the western property line of parcel number 9569601341 be preserved during the redevelopment of the site in accordance with Section 15-4 Existing Vegetation of the City’s zoning ordinance.
- That a stormwater management plan be submitted by the applicant demonstrating compliance with Chapter 24 Article 3: Stormwater Ordinance in the City Code of Ordinances.

- This condition mimics, with updated references a condition required in the Special Use permit originally issued in August of 1998 by City Council.
- Site lighting shall be dark sky compliant.
- Final plans for the project shall comply with approved plans, the conditions agreed to on the record of this proceeding and applicable provisions of the Hendersonville Zoning Ordinance and Code of Ordinances.

**Developer Proposed Conditions:** These conditions are included in the attached suggested motion. They can be included or removed at Council's discretion and upon agreement by the parties involved.

1) None

**Comments Updated for March City Council Meeting:** Following the February 4<sup>th</sup> City Council meeting the schematic site plan was revised to reflect feedback received during the Council discussion of the project plan. Staff received the updated schematic plan on Thursday February 18<sup>th</sup>. The list of uses and conditions was amended to the enhanced detail provided in the updated schematic plan. Please refer to the attached List of Uses and Conditions for the final language recommended based on the schematic plan submitted on the 18<sup>th</sup>.

## Appendix A

### **Klein/Helppie Rezoning and Special use Permit application - Requesting the rezoning of a lot situated at the southeastern corner of Fleming Street and Fassifem Court intersection from R-6 High Density Residential District to MIC-SU Medical, Institutional, Cultural-Special Use District.**

Mayor Niehoff explained this hearing is for the Klein/Helppie rezoning and special use permit request. He stated Mr. Philip Klein and Dr. Joanne Helppie are requesting a special use rezoning to allow a medical office or other specified use within an existing residential structure. The requested rezoning is from R-6 high-density residential district to MIC-SU Medical-Institutional-Cultural Special Use District. He stated the property is located at the southwestern corner of the Fleming Street/Fassifem Court intersection.

Mayor Niehoff opened the public hearing at 9:34 p.m. in accordance with North Carolina General Statutes by notice published in the Times News.

Mayor Niehoff reminded those present of the rules of procedure for a quasi-judicial hearing. He asked all those who wish to speak, either for or against the rezoning, to come forward to be sworn in. The following were sworn in: Mr. Roger Briggs, Mr. Jim Hall, Mr. Luther Smith, and Mr. Philip Klein.

Mayor Niehoff asked if anyone wanted to reserve the right to cross examine. No one spoke. That right was deemed waived.

Mr. Briggs submitted the Planning Department file number 98-34-SUR into the record of this proceeding. Mayor Niehoff received that file into the record. Mr. Briggs requested that the Council take official notice of the Land Development Plan, the Thoroughfare Plan, and the Zoning Ordinance of the City of Hendersonville. Mayor Niehoff responded that Council takes official notice of those documents.

Mr. Briggs addressed the Council providing the following information for this project: "The applicants for this project are Philip Klein and Dr. Joanne Helppie and are also the property owners. Mr. Klein and Dr. Helppie are the owners of a single-family dwelling situated on the southwestern corner of the intersection of Fleming Street and Fassifem Court. The property is currently zoned R-6 High Density Residential. The rezoning application requests MIC-SU Medical Institutional Cultural-Special Use. The rezoning application is accompanied by another application for a special use permit that states certain conditions. The conditions regarding use state that the property (if rezoned) could only be used for professional offices, medical clinical facilities, a residence, and/or business and medical support facilities. Other conditions stated in the application include, (1) the existing structure to remain, subject to renovation or expansion per the building code, (2) one-way entrance to rear parking from Fleming Street, (3) one-way exit from rear parking lot to Fassifem Court, and, (4) no on-street parking is specified. A conceptual site plan accompanied the application."

Mr. Briggs continued: "The *Land Development Plan* was amended by City Council on February 8, 1996 for this portion of the neighborhood. The amendment now indicates public and semi-public for this area. This is the classification in the Land Development Plan that supports medical facilities. The *Thoroughfare Plan* indicates Fleming Street as a major existing facility. Mr. Briggs stated a neighborhood compatibility meeting was held on May 15, 1998. A report of that meeting was in the agenda material. Owners of 46 neighboring properties were notified. We did have a significant attendance - about 12-15 individuals came to the meeting which was held in City Hall. Most of the questions revolved around the future of Fassifem Court and not so much specifically with this application. It was my observation, in summary, that neighbors in attendance either endorsed this application or had no objections to it. The Planning Board reviewed this application at its regular meeting on July 20, 1998. At that meeting the Board voted unanimously to recommend to City Council that it approve the application of Mr. Klein and Dr. Helppie, for: 1) an amendment to the official zoning map rezoning the subject property from R-6 High Density Residential to MIC-SU Medical Institutional District, and, 2) the issuance of a special use permit based on the site plan submitted by the applicant as well as the following conditions:

submittal of a stormwater management plan demonstrating compliance with Section 7-11 of the Zoning Ordinance and the Resolution Establishing Standards to Determine the Adequacy of Stormwater Facilities, and that a maximum sign area of 30 square feet be imposed on this application. An analysis of any issues that may be outstanding: This application is for a rezoning and a special use permit. A final site plan review and approval is required prior to the issuance of a zoning compliance permit. No unresolved issues have been identified."

Commissioner Harley stated the summary of the project calls for one-way streets, but the preliminary plan shows two-way streets and this is not listed as a Planning Board recommendation. Mr. Briggs explained the site plan was revised to reflect the one-way streets. Mr. Smith stated the streets are one-way in, it is wider at the entrance because of the handicap parking. Mr. Briggs stated that is addressed in the project narrative as one-way traffic flow.

Commissioner Padgett asked how stormwater management would be addressed. Mr. Briggs responded this will be reviewed during the final site plan review by submitting it to the City Engineer for review, but this information was not indicated on the conceptual site plan. Commissioner Padgett expressed a concern about the stormwater plan for the properties downhill from this project. Mayor Niehoff explained the stormwater management plan is required in the final site plan. Mr. Briggs explained that special use review only requires a conceptual site plan which is at a lower level from a technical standpoint than a preliminary site plan. He stated in his opinion, the applicant has complied with the conceptual site plan requirements.

Mayor Niehoff asked if anyone wanted to speak in favor of this proposal:

Jim Hall, 30 Westminister Court, "I was here three years ago when we had two of the same Council members and the same Mayor. That was my first experience here and the bottom line of the application was we were turned down because there was no special use ordinance in place. And, we had concurrence from the neighbor behind us but there was no way for the City to make us do what we promised and so we learned a lesson. This time, we have the ability to deliver, and you can make us deliver, I think that is really what this is about, there is a new neighbor in the back. I have a letter from her. She could not be here but she was at the neighborhood compatibility meeting. She is a practicing physician. She endorses this quite strongly. I would like to point out that on all of Fleming there are only four properties that are not zoned MIC. And this particular property, to the immediate right is a business and directly across the street there is a rather large physician's office. We think it is time to put this to good use. There will not be a lot of pavement, I can tell you, there's not going to be a development here. It's really going to be restoring the house that is there and then just trying to provide adequate parking with the ample land that is provided behind the house in this case which is unusual for Fleming. That's what makes this very well-suited for some sort of an office practice and easy walking distance to the hospital. 111 answer any questions you may have. Is this letter admissible or necessary? She just restated what she stated at the compatibility meeting. I have to tell you, compared to the experience three years, the compatibility meeting was a picnic. It was really quite pleasant. Everybody was pleased with what we are doing."

No one else spoke in favor of or in opposition to the proposal. The public hearing was closed at 9:45 p.m.

Mayor Niehoff asked the owner or agent of the owner to come forward. He asked Mr. Jim Hall if he agreed to accept the conceptual site plan and the conditions that were recommended by the Planning Board and have those binding on the future use of the property if it is rezoned to MIC-SU. Mr. Hall responded yes.



**Residential to MIC-SU Medical Institutional Cultural-Special Use, and for the issuance of a special use permit, based on the record before Council, moved that Council make the following factual findings:**

- (1) The development is located, designed, and proposed to be operated so as to maintain or promote the public health, safety, and general welfare;**
- (2) There are, or will be at the time they are required, adequate public facilities to serve the development;**
- (3) The development complies with all required regulations and standards of the zoning ordinance, or with variances thereto granted pursuant to Section 7-4-15, and with all other applicable regulations;**
- (4) The development is located, designed, and proposed to be operated so as to be compatible with adjacent properties and neighborhoods; and**
- (5) The development conforms with the general plans for the physical development of the City.**

**She further moved that Council approve the application of Mr. Klein and Dr. Helppie, for (1) an amendment to the official zoning map rezoning the subject property MIC-SU Medical Institutional Cultural-Special Use, and (2) the issuance of a special use permit, based on the site plan submitted by the applicant, as well as the limitations and conditions proposed by the applicant, the conditions recommended by the Planning Board, and any conditions to which the applicant has agreed on the record of this proceeding. Commissioner Harley seconded the motion. The Council voted unanimously; motion carried.**

Ordinance #98-0846

**AN ORDINANCE AMENDING THE  
OFFICIAL ZONING MAP OF THE CITY  
OF HENDERSONVILLE IN RE:  
KLEIN/HELPPIE; FILE NO. 98-34-  
SUR**

Be it ordained by the City Council of the City of Hendersonville:

1. Pursuant to Section 4-2 and Article XI of the Zoning Ordinance of the Qty of Hendersonville, North Carolina, the Official Zoning Map is hereby amended in the following manner:

Tax parcel PIN 9569-60-1454, as depicted on the sketch attached to this ordinance, is rezoned from R-6 High Density Residential to MICSU Medical Institutional Cultural Special Use.

2. This amendment involves a rezoning to a special use district and, thus, is subject to a special use permit, the terms of which may be found in the referenced file in the records of the Hendersonville Planning Department.

3. This ordinance shall be in full force and effect from and after the date of its adoption

Adopted this sixth day of August 1998.

## **Appendix B**

**Date with Month, Day, and Year (7-3-3.2(a)):** Completed

**Title of Project (7-3-3.2(b))** Completed

**Name of Project Designer, Developer, and Property Owner (7-3-3.2(b)):** Please add a note with all of this information.

**North Arrow, Scale, and Landmarks Sufficient to Identify Location (7-3-3.2(c)):** Completed

**Vicinity Map (7-3-3.2(d)):** Completed.

**Zoning of Project and Adjacent Properties (7-3-3.2(e)):** Completed

**City Limits (7-3-3.2(f)):** Please add note stating that the property is within the City limits of Hendersonville.

**Names of Adjacent Property Owners (7-3-3.2(g)):** Completed.

**Site Survey (7-3-3.2(h)):** Completed.

**Floodplain and Other Significant Natural Features (7-3-3.2(l)):** Completed.

**Proposed Streets, Alleys, Driveways, Parking Requirements, etc. (7-3-3.2(j)):** Completed.

**Preliminary Utility Layout (7-3-3.2(k)):** Completed.

**Entrance and Exit Locations (7-3-3.2(l)):** Completed

**Proposed Reservations (7-3-3.2(m)):** N/A

**Tree Survey and Proposed Areas for Buffering (7-3-3.2(n)):** Please provide a survey showing tree line before site preparation with species and diameter of trees 12 inches or greater DBH (diameter at breast height) indicated and showing areas to be screened, fenced, walled and/or landscaped. Please also show existing trees and shrubs that will be retained.

**Building(s) Locations, Dimensions, and Uses (7-3-3.2(o)):** Please show building height.

We shall require a measure of the building heights that determines the “average grade” in the following manner.

- 1) Average grade is determined by identifying at least three spot elevations, measured at equal distances from each other and spaced no more than 50' apart, along each façade of a building. The resultant spot elevations shall be added together and divided by the total number of spot elevations identified to determine the building's "average grade."

- a. Spot elevations shall be measured within 2' of the building foundation and reflect the proposed finished grade for the project.

Spot elevations shall not be taken from berms or other fill which would artificially impact the site elevation.

**Notations in Chart Format** (square footage and percentage of total site) (7-3-3.2(p)): It does not appear that the parking/vehicular use area calculations is correct on the site plan.

Total Project Area  
Proposed Lot Areas  
Site Coverage - Buildings  
Site Coverage - Open Space  
Site Coverage – Streets and Parking  
Site Coverage – Other Facilities  
Site Coverage – Common Open Space:

**Sign Data** (7-3-3.2(q)): Completed.

**Phasing Lines** (7-3-3.2(r)): N/A

**Transportation Impact Analysis** (7-3-3.2(s)): What is the approximate number of employees?

**Off-Street Parking** (6-5): Completed.

**Off-Street Loading and Unloading** (6-6): Completed.

**Sidewalks** (6-12): Providing sidewalks would be required along the entire northern property line. Most of the property line is served by an existing sidewalk, but the north western corner is missing a section. This section would need to be provided or a fee in lieu proposed.

**Rights-of-Way (Thoroughfare) Compliance** (6-15): N/A

**Common Open Space** (common space or urban open space where applicable) (6-16): It appears that you are currently meeting these requirements; I just wanted to make sure that the calculations are following the guidelines of subsection b.

- a) At least 10% of the project area shall be devoted to common open space.
- b) Common open space for non-residential developments shall be used for landscaping, lawns, screening or buffering. It may not contain any streets,

parking or loading areas, outdoor storage, trash handling, utility or service areas, or areas with impervious surfaces other than sidewalks, recreational facilities and meeting areas.

**Adequate Facilities (7-11):** Completed.

**Entry Corridor (5-18):** (checklist attached if applicable) N/A

**Zoning District Standards** (applicable zoning district in Article 5): Completed

**Landscaping** (Article 15): Completed

**Natural Resource Protection Standards** (floodplain, stream buffer, etc., where applicable) (Article 17): N/A

**Stormwater Management** (COD Chapter 24 Article III): Provide a completed Stormwater Maintenance Agreement. Contact Engineering for additional details.

Please add

1. a note indicating that a final plan must include a stormwater management system that complies with the City stormwater ordinance,
2. an approximate footprint area and proposed location for a stormwater management system.

**Comprehensive Plan Compliance** (Section 14-1):

Development Guidelines

- Minimal front setback-
  - Required front setback: 30'
  - Proposed front setback: Approximately 75'
- Rear or limited side parking only
  - Front and side parking proposed.
- Façade articulation
- Development and maintenance of traffic calming improvements
- Ground-floor storefronts and/or architectural detailing on parking structures
- Encouragement of neighborhood master-planning that links hospital with offices, services and Downtown
- Development and maintenance of traffic calming improvements



## **Appendix C**

### **Planning Report**

#### **Neighborhood Compatibility Meeting**

#### **Application for a Conditional Zoning District**

**Fleming Street Medical Office    File # P20-41-CZD**

**Tuesday, November 24, 2020        2:00 p.m.**

Tyler Morrow, Planner, convened the compatibility meeting at 2:00 pm in the Assembly Room of the City Operations Center. Approximately one application representative and four City staff were in attendance. The follow attended:

<b><i>Name</i></b>	<b><i>Address</i></b>	<b><i>Name</i></b>	<b><i>Address</i></b>
Carleton Collins (app)	105 Cranford Rd.		
Lew Holloway	staff		
Tyler Morrow	staff		
Tyler Henry	staff		
Terri Swann	staff		

Mr. Morrow opened the meeting explaining this is the first step in a three-step process. He explained the conditional rezoning process adding anyone who received notice of this meeting would receive notice of the City Council Public Hearing. Minutes of this meeting will be forwarded to Planning Board and City Council. Mr. Morrow said the project will go before the Planning Board in December and City Council will hear the project in January. Mr. Morrow stated this meeting is for the neighbors to learn about the project and they should focus on the compatibility of the project in the neighborhood. This is a virtual meeting and Mr. Morrow explained the process and the steps to participate in the meeting. This is an informal meeting so state your name and address before making any comments as minutes of this meeting are being taken.

Mr. Morrow stated the property is currently zoned MIC, Medical, Institutional and Cultural and MICSU, Medical, Institutional and Cultural Special Use. The proposed rezoning is MIC CZD, Medical Institutional and Cultural Conditional Zoning District. The site plan shows a 13,536 square foot building. This is a three-story medical office building. If approved the project will be limited to what is on the approved site plan. They plan to have access from Fleming Street and from 9<sup>th</sup> Avenue West. The applicant Mr. Carleton Collins is here to give a presentation.

Carleton Collins, Architect for the project stated his name for the record. The design of the building is a three-story medical office building with parking that will wrap around the building. There will be 4,500 square feet per floor. They imagine this to be acute health care, family pediatrics or orthopedic offices. They will comply with the buffer requirements for a Type B buffer between commercial and residential and they plan to add landscaping to the other areas as well. The main entry will be off Fleming Street and that entry will align with a covered drop-off. The other entrance/exit will be off 9<sup>th</sup> Avenue West.

He did read the comments concerning stormwater and they will manage this in such a way as to not impede on the neighboring properties. The character of the building is not highly modern and not highly traditional. It is a combination of both. They plan to use stucco, brick and glass. It will feature an outdoor staircase, enclosed dumpster and a covered canopy at the main entrance.

Mr. Collins stated along Fleming there exists several medical offices that are small one-story buildings but also in the area are taller buildings such as the hospital and high school. They plan to have this building blend in with the area. The height of this building does meet the zoning ordinance requirements. The project will meet all the requirements of the City of Hendersonville.

Lew Holloway, Community Development Director stated the public comments will be included fully in the minutes of this meeting. He summarized the comments.

**Pre-Submitted Public Comments:**

**Candis Killam, 524 Fassifern Court:** I have lived on Fassifern Ct for almost 20 years, it is a great little neighborhood. My house is only 2 properties down from the proposed building. I do not want the rezoning to change, besides the hospital and high school, there are not any buildings residential or medical etc that are larger than one story. I do not think it would be appropriate to build anything above a one story building so close to residential areas. Before they tore down the 2 (one story) pervious buildings they were medically related and did well to fit in to our neighborhood and surrounding area. Please do not allow this change to take place. Thank you

**Heather B West, 505 9th ave W:** Our house is adjacent to the property on 9th Ave. We are concerned about a building of this size being right beside our house. A 3 story medical building would tower over my house. My children would play in the back yard with a huge building looming over them. Instead of looking out onto trees, my daughter would get to see a retaining wall and dumpster when she looks out her window. And what would this kind of property, so out of keeping with this neighborhood, do to my property value? The financial impact of an enormous building so close to my house would be huge.

**John B Hunter, 923 Fassifern Ct:** Last year we purchased the home at 923 Fassifern Ct in Hendersonville. This home was built by Dr. Joseph Sevier in 1928 and holds quite a bit of historical value. Dr. Sevier took over as Headmaster at the Fassifern School for girls from 1925 until his passing in 1945. Below are a couple links articles with more information about the Fassifern School. <https://www.blueridgenow.com/article/NC/20131020/News/606028276/HT> [https://www.greetingsfromthepast.com/2019/07/fassifern-school/Dr. Sevier was also the founder of Camp Greystone that has been in operation for over 100 years and is still in operation today in nearby Tuxedo, NC.](https://www.greetingsfromthepast.com/2019/07/fassifern-school/Dr.-Sevier-was-also-the-founder-of-Camp-Greystone-that-has-been-in-operation-for-over-100-years-and-is-still-in-operation-today-in-nearby-Tuxedo,-NC/) <https://www.campgreystone.com> We are disappointed we haven't been given much time to prepare for this meeting and we are not going to be able to attend or make comments on the Zoom meeting today. We were only recently notified by the Community Development Department Planning Division that a developer wants to rezone the nearby property for this large 3 story medical office building. We are close to the hospital and understand that medical offices and similar businesses will pop up nearby, but never expected a monstrosity like this to be permitted so close to a residential and historical area. This building is much too large and out of character with the neighborhood. We have reached out to the Hendersonville Historic Preservation Commission and will be working on ways to protect the residential

community from this type of project. We hope your department does not allow this rezoning so that we are not forced to take additional action.

**Zach Forrest, 520 Fassifern court:** Please do NOT allow this property to be rezoned. After seven years of living in my beloved travel trailer, I purchased the home right beside this property just 6 months ago. When I moved to the neighborhood the house on the property was being used as a medical facility and that was working out just fine. Since then the house has been torn down and the basements filled resulting in my backyard (and my neighbors) becoming a mud river upon raining that I'm happy to share videos of. After contacting the owners and promises to fix the issue nothing was done. Due to the work already done on the property the rainwater is already inches from entering the basement and creating a tremendous financial burden. I had to further ruin my yard by digging a trench to divert the water away from the basement and I have spent thousands (happy to provide receipts) on sump pump installation. Careful consideration will need to be made regarding the stormwater drainage so that I can have my backyard and not have to worry about a flooded basement. I'll summarize my remaining concerns;- Parking- 52 parking spaces for a 13,500+ square foot building is concerning. There are not enough parking spaces for a building of this size. This is concerning because this will result in people blocking my driveway or parking down the streets of our currently quiet neighborhood. -Water Drainage- Based on the map the plan is to divert stormwater into my and my neighbor's properties. This is concerning as it effectively passes the burden of stormwater to myself and my neighbors rather than taking responsibility for and properly disposing of the additional water created from building this structure. I'm concerned that this will cause a tremendous financial burden that would otherwise be addressed with proper development.-Proposed building proximity to property line-The map scaling is very unclear making it impossible to understand how close the proposed building site or retaining walls are to my property line. I'm also concerned that the brush/trees/landscaping between our properties will be removed or not be sufficient to maintain the privacy and barrier between the properties.-Retaining walls-The retaining walls look alarmingly close to the property line and there is a gap that would allow water to flow directly into my neighbors and my own yard. This is very concerning. -The map provided does not have an accurate scale-Will it be possible to have a map with an accurate scale or get confirmation of which scaling is correct? Right now it has scale as 1" = 20' but directly above it, there is another scale that is not the same. Which one is it? Can we get a new map or confirmation on which scale is accurate before we move forward?-3 story building will likely block the sun-I'm concerned that the sun will be blocked by the 3 story building.-Only proposed 3 story building in the area-I was promised by the owners of the property that the building would be built to blend in with the neighborhood. The mockups are of a very modern building. This neighborhood is from the late 1800s and early 1900s so how does a modern building fit in with the neighborhood? Further, this 3 story building would be the only one other than the hospital so further does not fit in with the neighborhood. The whole neighborhood shares these concerns including Candis who has sent in her comments and others including the other adjacent property owner. Please do not allow this re-zone to occur.

**Jason Peiffer, 1005 Fassifern Ct:** I reside in the Fassifern Ct. neighborhood adjoining the properties and have concerns regarding marketability of the proposed medical office building and question the need for rezoning. We already have several vacant or nearly vacant medical office buildings nearby, one of which is directly across the street on the opposing side of the entrance to our neighborhood (containing a single shoulder clinic in a much larger vacant complex). Is there need for rezoning so that an even larger 3 story medical building may be placed on the properties? Does the builder already have contracts in place that we are assured all 3 stories of an imposing complex will be needed directly next to our neighborhood? Should the rezoning and proposed building take place as envisioned, what will be the

maximum height of the retaining wall immediately next to the houses of our court as builders seek to level the property? What considerations have been given to run-off from the proposed parking lot? We already have flooding and heavy flow through the lawns of properties just below the proposed building site during rainstorms. Will the parking lot divert rainwater directly into storm drains or exacerbate existing problems?

Mr. Morrow stated they will hear the live comments. He explained the raise hand feature and asked each person to state their name and address for the record.

Ken Fitch, 1046 Patton Street stated the comments should be noted and there are questions that have not been answered. There are many concerns with this project such as the elevation of the building. He asked if the elevation would be altered to align with Fleming Street and had concerns about the bank on the Fassifern side. He asked if the stakes with pink ribbons are on the property lines. Mr. Collins stated he cannot speak to the stakes on the property. The sitework team will blend into the existing grade. They will raise the elevation slightly to accommodate the building and the parking lot will remain flat. He stated the upper right portion has a low part on the property and he read in the comments the mention of the retaining wall. The retaining wall will be at the edge of the building and the parking lot. They will work out the stormwater details and they do not plan to impede on the surrounding neighbors.

Mr. Fitch stated retaining the lower grade at the rear of the building could have an impact to the adjoining properties. He asked if the Tree Board will review this project and if they plan to keep any of the existing trees on the property. Is a tree survey required and what are the details of the buffer?

Mr. Collins stated there will be a combination of taller trees and smaller landscaping to provide a soft visual screen. They plan to retain what trees they can, but some will have to be removed for construction.

Donald Cooper, 900 Fleming Street stated he owns the Edward Jones building on the corner. Will the first floor be level with Fleming Street? Mr. Collins stated yes. Mr. Cooper stated that will cause the property to be 5,6,7,8 feet higher. Mr. Collins stated several feet yes, but not 8 feet. Mr. Cooper stated having a three-story building and raising the elevation of this property will make it significantly higher than Dr. Hornsby's office building that sits across the street and his building is only one story. Mr. Collins stated this property will be relatively level with Fleming Street. The property across the street is higher than street level.

John Hunter, 923 Fassifern Court stated this building is too high for the character of the neighborhood. He wanted it noted on record that he opposes the project and that he does not reside in Ann Arbor, Michigan. He asked who gets the final decision on this. Mr. Holloway stated this is the first step in the process. The project will move on from here to the Planning Board in December and they will give their recommendation on the project to City Council. It will be heard by City Council in January and they will have the final approval. This is only a public input session and the neighbors will have another opportunity to give their comments to the Planning Board and City Council.

Heather West, 505 9<sup>th</sup> Avenue West stated she is an adjacent property owner and she stated the height of the retaining wall is a big concern to her. The house is only 10 feet off the property, and she is



concerned the wall will have an effect on her property. Mr. Collins stated they do not anticipate any retaining wall near the dumpster. The wall will only be five to six feet. Ms. West asked if the wall is part of the building. Mr. Collins stated yes that is correct, it is part of the building. It is not a freestanding retaining wall. It is next to the staff entry and the five-foot sidewalk and is up against the building.

Ms. West's husband stated the neighbors and himself have spent money on the upkeep and landscaping of their yards and now this will change the whole outlook of the neighborhood. They will have to listen to a dumpster being emptied every day.

Mr. Fitch asked if a client has been identified for the project and will there be any surgical procedures done at the building or will the building include a lab. He had concerns about the right and left turn onto the street from the property. There is also only one ADA parking space and he feels that is inadequate. He asked what the rear view from Fassifern would be.

Mr. Collins stated they will provide more information on the views at the next meeting. He is not sure that he understands Mr. Fitch's comments on the entryway. He explained how they will enter the property and where the drop-off is located. He also stated they have no potential tenants as of right now. They wanted to get the approval for the project before they market the building. They will have flexibility with the practice type and lean towards non-surgical procedures.

Ms. West asked if the landscaping would be enough to provide a privacy barrier for their property. Mr. Collins stated they could tailor one to meet her needs.

Ms. West's husband stated for the record that he does not want this building and he did not get a response from Mr. Collins. Mr. Collins stated he understands their concerns.

Mr. Holloway stated the notes become part of the public record from this meeting and they will be included in the Planning Board and City Council memos.

Zach Forrest, 520 Fassifern Court stated he is opposed to this being built for many different reasons. There are two different scales on the map, and he doesn't know which one is accurate. Mr. Morrow stated the site plan submitted is 24" x 36" and staff had to shrink that down to mail it out. The 24" x 36" site plan is in the Planning office located at 100 N. King Street and any of the neighbors can come by and get a copy of it. Mr. Forrest had concerns about the 20-foot buffer zone from the property line. Mr. Collins stated the City of Hendersonville has landscaping requirements for the buffers and it is placed in the 20-foot zone of the property line. They have submitted different plant materials with more detail, and they can tailor the landscaping along the property line to achieve the privacy that the residents want on their side of the property.

Mr. Forrest stated a great point was made concerning the height of the building by Mr. Fitch. If they plan to raise the elevation six to eight feet, will the first story be at ground level? Mr. Collins stated the civil engineer has done the grading for the site; their intent is to try to establish a level grade to the site then blend back to the existing grade with the retaining wall at the building. They will study this and have more detail at the next meeting. Mr. Forrest stated if they have an additional three stories from Fleming Street then that actually makes the building four stories and it is unreasonable to build it at that

height. The high school and the hospital are the only three-story buildings in the area. If he plans to level the property, they will have to bring in 100 dump trucks with sand and that is just ridiculous. Mr. Collins stated at this stage, not all the details have been worked out.

Mr. Forrest stated it would be great to see a 360 of the building and the rear view. He feels that a three- or four-story building will block the sun from his house, and he will never see the sun in his back yard again. What is the actual height of the building? Mr. Collins stated the levels are twelve feet high floor to floor. Mr. Forrest asked what landscaping materials can shield the privacy of a four-story building? The trees would have to be extremely tall. Mr. Collins stated the intent of the landscaping is not to shield a building that high but rather to screen the residential areas.

Mr. Forrest feels like it would be more accommodating for a one- or two-story office building. They will not have the privacy they once had once this building is built.

Mr. Collins stated this meeting is to have a discussion with the neighbors. They meet all the ordinance requirements for the City of Hendersonville including the landscaping. The owner will try to work with the neighbors, and they can have a neighborhood meeting if possible with the neighbors.

Mr. Forrest was concerned about getting noticed for the next meetings. Mr. Morrow stated if you were notified for this meeting then you will also be notified for the Planning Board and City Council meetings. The property will also be posted for each meeting.

Mr. Fitch asked about the buffer requirements for residential and commercial. Mr. Holloway stated there are specific requirements to buffer residential from commercial uses. Staff will do a review of the site plan prior to the Planning Board meeting. December 14<sup>th</sup> is the date of the Planning Board meeting and this project could move forward to that meeting. There is nothing to prevent this from the moving forward to the December Planning Board meeting.

Ms. West had concerns about the traffic on school days in the afternoon and asked if a traffic study is required. She is worried about the children that walk to and from school. Mr. Collins stated there is no requirement for a traffic study for this project.

Mr. Morrow asked if anyone else would like to comment. No other comments were made.

Mr. Morrow stated this concludes the meeting. He stated the next step for this project is the Planning Board and everyone that got noticed will be noticed of the Planning Board meeting as well. The property will also be posted with the meeting information on the sign.

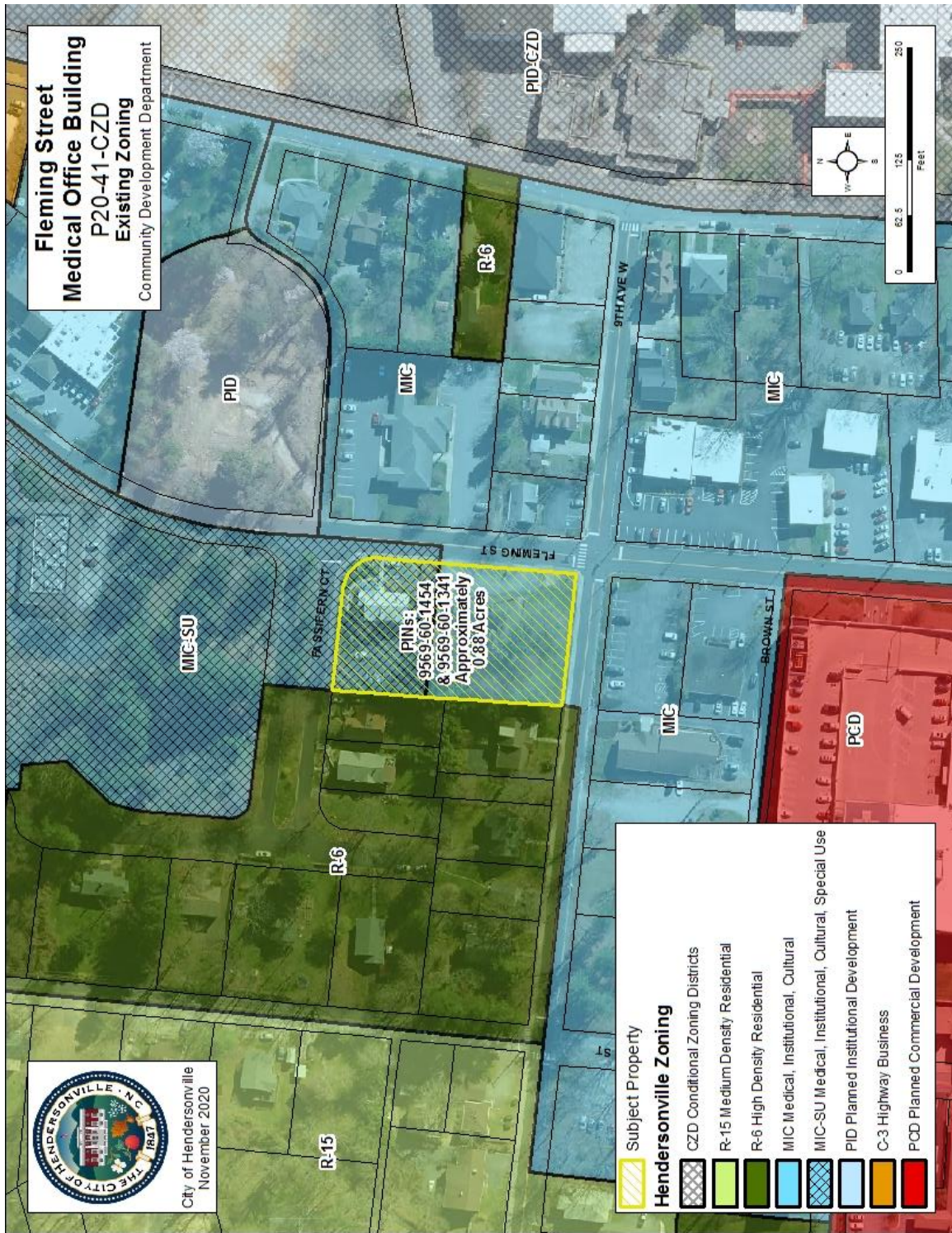
With no further comments or questions, Mr. Morrow closed the meeting at 2:54 pm.

**Appendix D**



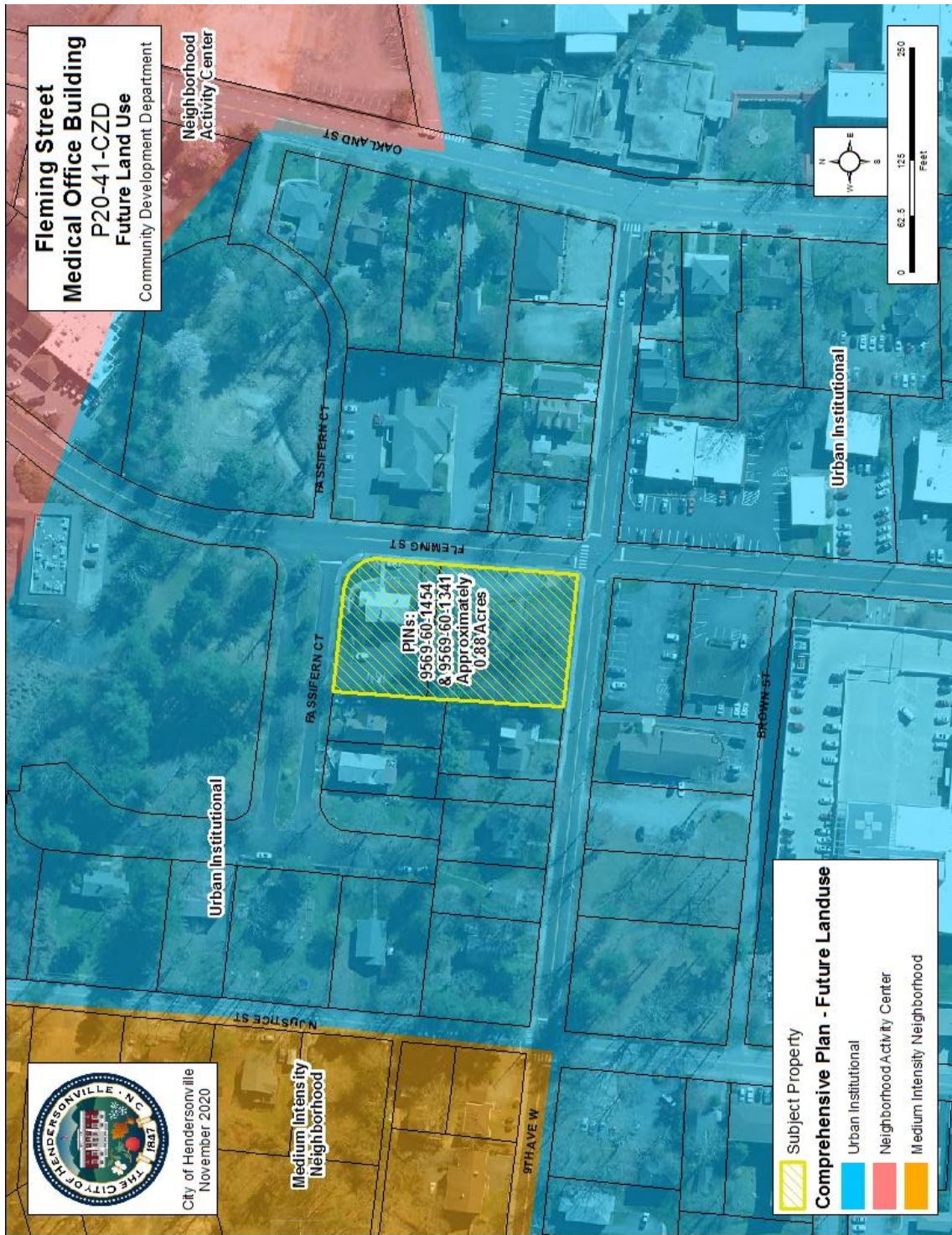


## Appendix E

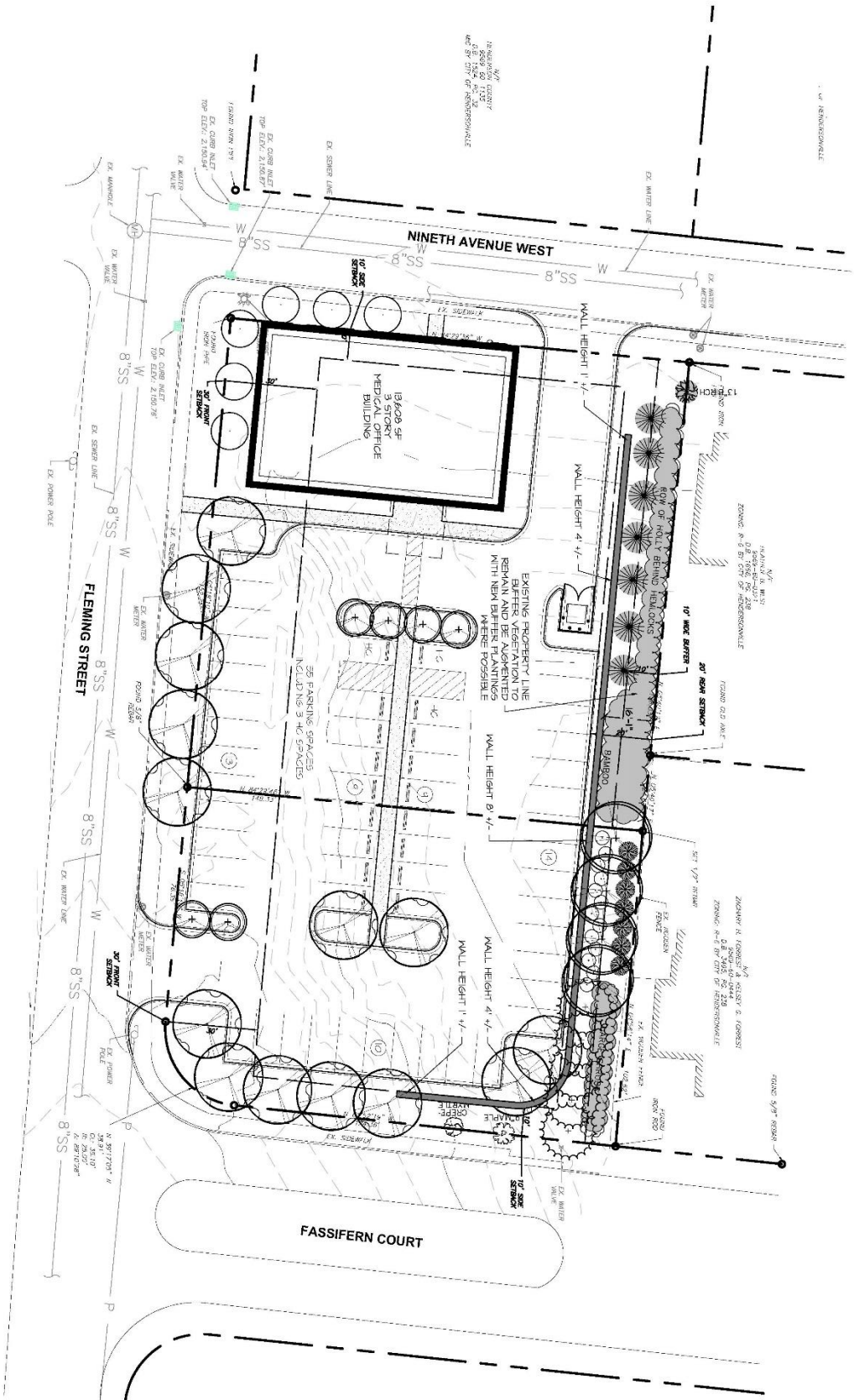




## Appendix F



Appendix G



**PROJECT SUMMARY**

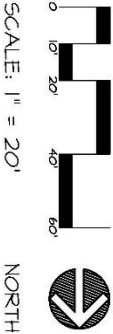
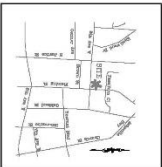
**OWNER / CONTACT:**  
CCF FLEMING LLC  
3520 NE 16th Avenue  
Miami, FL 33137

**PROJECT ADDRESS:**  
408 & 919 Fleming Street  
Hendersonville, NC 28711

**PROJECT INFORMATION:**  
Current Zoning = Medical, Institutional, Cultural (MIC)  
Front Setback = 30'  
Side Setback = 10'  
Rear Setback = 20'  
Proposed Use = Medical Offices  
Total Site of Property = 0.866 AC +/-

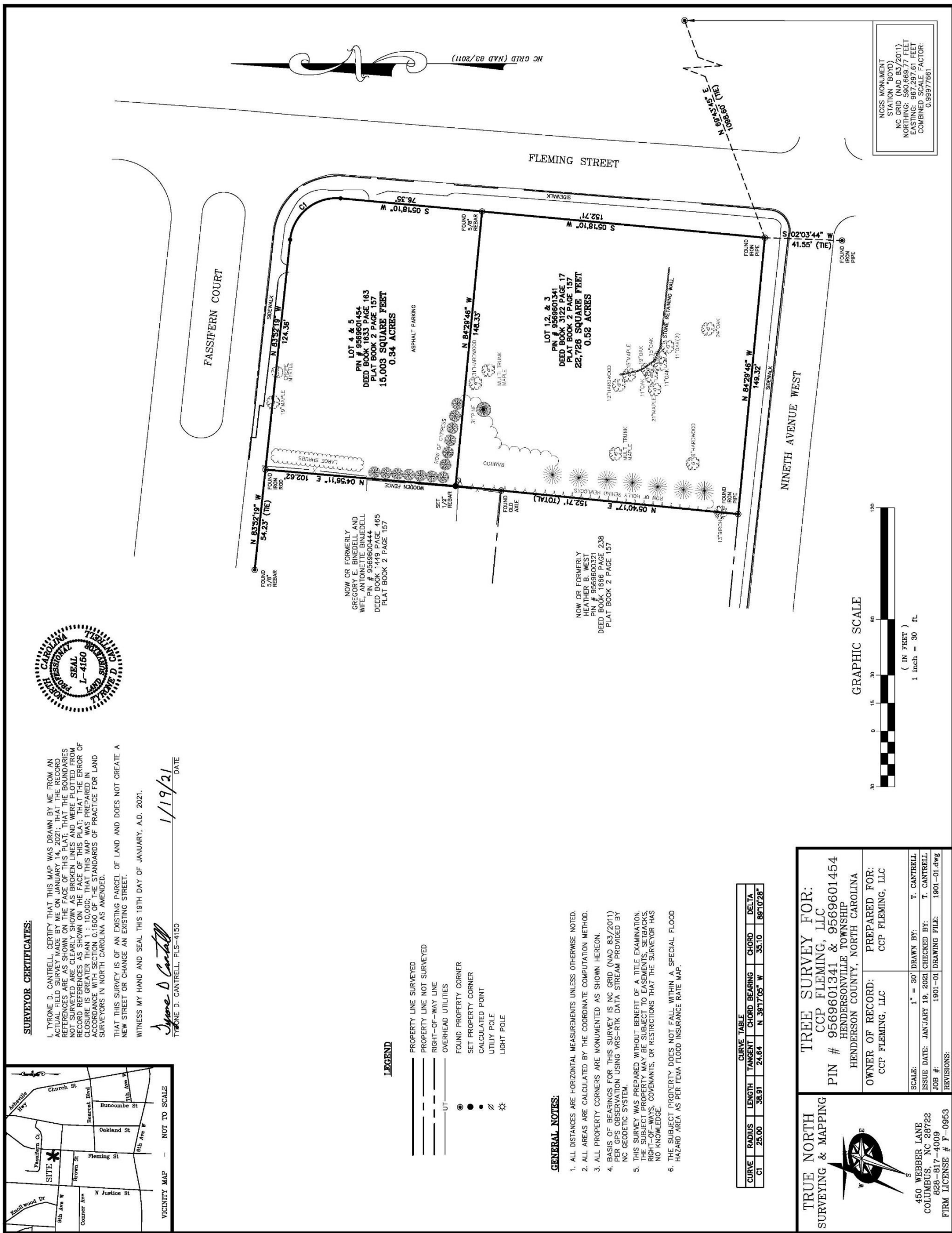
**LANDSCAPE ARCHITECT:**  
Design Associates  
1293 Hendersonville Rd., Suite 21  
Asheville, NC 28803  
(828) 277-7410 / 277-7413 fax

**ARCHITECT:**  
The Carolina Collins AIA  
Carolina Collins Architecture  
828-285-0450  
carolinacollins.com



<b>Site Plan</b>	<b>Fleming Medical Office</b> 903 & 919 Fleming Street Hendersonville, NC 28791		<b>DESIGN ASSOCIATES</b> LANDSCAPE ARCHITECTS & LAND PLANNERS	1293 Hendersonville Road Suite 21 Asheville, NC 28803 828-277-7410 Fax: 828-277-7413
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Appendix L









## **SUGGESTED MOTIONS – P20-41-CZD: Fleming Street Medical Office Building**

### **1) For Recommending Approval:**

I move City Council adopt an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of the subject property from MIC Medical, Institutional, Cultural and MIC-SU Medical, Institutional, Cultural, Special Use to MIC-CZD Medical, Institutional, Cultural Conditional Zoning District, with the following conditions:

**[PLEASE REFERENCE THE LIST OF USES & CONDITIONS WITH AMENDMENTS AS NECESSARY]**

The motion is based on the site plan submitted by the applicant and subject to the limitations and conditions stipulated on the List of Uses and Conditions, finding that the rezoning is consistent with the Comprehensive Plan's Future Land Use map, and that the rezoning is reasonable and in the public interest for the following reasons:

**[PLEASE STATE REASONS; SEE STANDARDS BELOW THAT, PER SECTION 11-4 OF THE CITY ZONING ORDINANCE, SHALL BE CONSIDERED PRIOR TO ADOPTING OR DENYING A ZONING ORDINANCE AMENDMENT]**

### **2) For Recommending Denial:**

I move City Council not adopt an ordinance rezoning the subject property for the following reasons:

**[PLEASE STATE REASONS; SEE STANDARDS BELOW THAT, PER SECTION 11-4 OF THE CITY ZONING ORDINANCE, SHALL BE CONSIDERED PRIOR TO ADOPTING OR DENYING A ZONING ORDINANCE AMENDMENT]**

#### **Zoning Ordinance Standards:**

Comprehensive Plan consistency: whether and the extent to which the proposed amendment is consistent with the Comprehensive Plan and amendments thereto.

Compatibility with surrounding uses: whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject property.

Changed conditions: whether and the extent to which there are changed conditions, trends or facts that require an amendment.

Public interest: whether and the extent to which the proposed amendment would result in a logical and orderly development pattern that benefits the surrounding neighborhood, is in the public interest and promotes public health, safety, and general welfare.

Public facilities: whether and the extent to which adequate public facilities and services such as water supply, wastewater treatment, fire and police protection and transportation are available to support the proposed amendment.

Effect on natural environment: whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment including but not limited to water, air, noise, storm water management, streams, vegetation, wetlands and wildlife.



CITY OF HENDERSONVILLE

AGENDA ITEM SUMMARY

SUBMITTER:	Lew Holloway	MEETING DATE:	March 4, 2021
AGENDA SECTION:	PUBLIC HEARING	DEPARTMENT:	Comm. Dev. Dept.
TITLE OF ITEM, Presenter Name, Title:	Brown Street ROW Abandonment (P21-04-SC) – <i>Lew Holloway, Community Development Director</i>		

**SUGGESTED MOTION(S):** I move Council to adopt the Order to Permanently Close a portion of an opened and improved ROW for Brown Street located on PIN 9569-50-9133, 9569-50-8164, 9569-50-7165 and 9568-59-9771 petitioned by Henderson County Hospital Corporation.

**SUMMARY:** The City has received an application from the Henderson County Hospital Corporation to close a portion of an opened and improved ROW for Brown Street located on PIN 9569-50-9133, 9569-50-8164, 9569-50-7165 and 9568-59-9771. A location map, survey and legal description are included.

General Statue 160A-299 outline procedures and provides the City with authority for permanently closing streets and alleys. Whenever there is a proposal to permanently close any street or public alley, the City Council shall first adopt a resolution declaring its intent to close the street or alley and shall set a date for a public hearing. At the February 4<sup>th</sup>, 2021 City Council meeting, the Council adopted a Resolution of Intent to close a portion of an opened and improved ROW for Brown Street. The resolution scheduled a public hearing for March 4<sup>th</sup>, 2021. At this public hearing, any person may be heard on the question of whether or not the closing would be detrimental to the public interest or the property rights of any individual.

To permanently close the street, City Council must find that.

- 1) The closing of a portion of an opened and improved ROW for Brown Street located on parcels PINs 9569-50-9133, 9569-50-8164, 9569-50-7165, 9568-59-9771 and described in the attached street closure survey and description are not contrary to the public interest; and
- 2) No individual owning property in the vicinity of the opened ROW would be deprived of reasonable means of ingress and egress to their property by the street closing and ROW abandonment.

**BUDGET IMACT:** NA

**Is this expenditure approved in the current fiscal year budget?**

**If no, describe how it will be funded.**

PROJECT NUMBER: N/A

PETITION NUMBER: N/A

**ADDITIONAL PETITION NUMBER:** N/A

**PETITIONER NAME:** N/A

**ATTACHMENTS:**

Ad Proof, Certificate of Mailing, Order to Close, Resolution of Intent, Survey



Order:	J000673571	Pubs:	2,3	Rate:	LE
Phone:	(828)697-3003	Class:	0001		
Account:	32002031	Start Date:	02/07/2021		
Name:	ATTN: Angela	Stop Date:	02/28/2021	Payments:	\$ 0.00
Caller:	Angela Reece	Insertions:	8	Balance:	\$ 341.76
Taken By:	S037	Columns:	2	Lines:	98
Schedule:	HTN Times News 2/7 1x, s2/14 1x, s2/21 1x, s2/28 1x			Taken On:	02/05/2021
SalesRep	Nancy Mullinax				

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO DECLARE THE INTENT TO CONSIDER CLOSING A PORTION OF AN OPENED AND IMPROVED ROW**

**WHEREAS**, NC General Statute 160A-299 authorizes the City Council to close public streets and alleys; and

**WHEREAS**, Henderson County Hospital Corporation has petitioned the City of Hendersonville City Council to close a portion of an open and improved ROW for Brown Street located on PIN 9569-50-9133, 9569-50-8164, 9569-50-7165 and 9568-59-9771; and

**WHEREAS**, NC General Statute 160A-299 requires that City Council conduct a public hearing for the purpose of giving consideration to the petition; and

**WHEREAS**, At the public hearing, any person may be heard on the question of whether or not the closing would be detrimental to the public interest, or the property rights of any individual;

**NOW THEREFORE, BE IT RESOLVED** by the City Council of the City of Hendersonville, North Carolina that:

1.City Council herewith calls a public hearing to be held at 5:45 pm on the fourth day of March 2021, in the Council Chambers of City Hall to consider closing a portion of an opened and improved ROW for Brown Street. Persons shall be allowed to attend and comment in person or via Zoom at the following address:

<https://zoom.us/j/95746846396?pwd=YmlXdxHcRfVIM2VElqcEVWt1ZLZz09#success>

Dial-in by phone: (646) 558-8656  
Meeting ID: 957 4684 6396  
Passcode: 28792

The public will be permitted to submit written comments for a period of twenty four (24) hours following the close of the public hearing. Written comments may be submitted on the City's webpage at [www.hendersonvillenc.gov/public-comment](http://www.hendersonvillenc.gov/public-comment) or directly to the City Clerk, Angela Reece, areece@hvinc.gov, 160 6th Avenue East, Hendersonville, NC 28792.

2.The legal description for the portion of Brown Street proposed for closing is as follows:

**BEGINNING** at an iron pin set, being the southwest corner of Tract 2 as described in deed book 1580 page 534; thence from said beginning point N 06°16'35" E 1.18'to a calculated and

unmarked point, said point being the intersection of the east margin of the right-of-way for North Justice Street and the north margin of the right-of-way for Brown Street; thence with the north margin of the right-of-way of Brown Street S 85°10'57" E 82.28' to a calculated and unmarked point; thence S 84°21'40" E 152.77' to a calculated and unmarked point; thence S 85°12'17" E 45.79' to a calculated and unmarked point, said point being the intersection of the north margin of the right-of-way for Brown Street and the east line of that property as described in deed book 1026 page 394; thence crossing Brown Street and with the east line of said property S 05°00'21" W 20.00' to a calculated and unmarked point, said point being the intersection of the south margin of the right-of-way for Brown Street and the east line of said property; thence with the southern margin of the right-of-way of Brown Street N 85°12'17" W 45.86' to a calculated and unmarked point; thence still with the southern margin of the right-of-way N 84°21'40" W 234.92' to a calculated and unmarked point, said point lying N 04°49'03" E 0.18' from a chiseled "X" in the sidewalk, the northwest corner of the Pardee Hospital tract; thence N 04°49'03" E 18.82'to the point and place of BEGINNING. Having an area of 5,567 square feet, or 0.128 acres as shown on plat by Ownbey Land Surveying, PLLC entitled Exhibit Map Illustrating Proposed Partial Closure of Brown Street for Henderson County dated January 7, 2021.

3.The City Clerk is hereby directed to publish this Resolution of Intent once a week for four successive weeks.

4.The City Clerk further directed to transmit by registered or certified mail to each owner of property abutting upon that portion of said street a copy of the Resolution of Intent.

5.The City Clerk is further directed to cause adequate notices of the Resolution of Intent and the scheduled public hearing to be prominently posted in at least two along the portion of Brown Street proposed for closure as required by G.S. 160A-299.

Adopted by the City Council of the City of Hendersonville, North Carolina on this fourth day of February 2021.

Attest: Barbara G. Volk, Mayor, City of Hendersonville

Angela L. Reece, City Clerk  
Approved as to form:  
Angela S. Beeker, City Attorney

2/7, 2/14, 2/21, 2/28, 2021

673571

Attention: \_\_\_\_\_ Fax: \_\_\_\_\_

This is a final proof. If any information is incorrect, please contact your sales representative prior to the deadline of the first insertion. Otherwise your order is accepted as having been approved.

CERTIFICATE OF MAILING

This is to certify that the foregoing document has been duly served by depositing a copy of the same in the United States Mail, first-class, postage pre-paid, to the following:

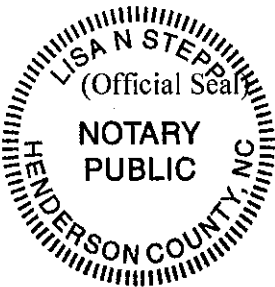
- 1. Henderson County – 800 N. Justice Street
- 2. Henderson County – 1 Historic Courthouse Square
- 3. Henderson County Board of Trustees, Pardee Hospital – 820 N. Justice St.,
- 4. Debra Austin Chapman Revocable Trust – 9 Claremont Dr. Flat Rock, NC 28731
- 5. William O & Annissa H Barnwell – 284 Terrys Gap Rd, Fletcher NC, 28732

Terri Swann 2/12/21  
Terri Swann Date  
Administrative Assistant, Community Development Department

Henderson County, North Carolina

I certify that the following person personally appeared before me this day, acknowledging to me that she signed the foregoing document: \_\_\_\_\_.

Date: 2/12/2021  
Notary Signature: Lisa N Stepp  
Notary Printed Name: Lisa N Stepp  
My Commission Expires: Sept. 5, 2021



ORDER # \_\_\_\_\_

**ORDER TO PERMANENTLY CLOSE, A PORTION OF BROWN STREET  
(Petition of the Henderson County Hospital Corporation)**

NORTH CAROLINA  
HENDERSON COUNTY

TO WHOM IT MAY CONCERN:

WHEREAS, North Carolina General Statute Section §160A-299 authorizes a city council to permanently close any street or public alley way within its corporate limits or area of extraterritorial jurisdiction and provides a procedure for the closing such streets or alleyways; and

WHEREAS, Henderson County Hospital Corporation has petitioned the City of Hendersonville to close a portion of an open and improved ROW for Brown Street located on PIN 9569-50-9133, 9569-50-8164, 9569-50-7165 and 9568-59-9771; and

WHEREAS, on February 4<sup>th</sup>, 2021, the Hendersonville City Council adopted a resolution expressing the intention of the municipality to close portions of these streets and setting March 4<sup>th</sup>, 2021 as the date of a public hearing regarding such closure; and

WHEREAS, the aforementioned resolution has been published once a week for four successive weeks prior to the public hearing in the Hendersonville Times-News (a newspaper of general and regular circulation in Hendersonville and Henderson County) and a copy thereof has been sent by certified mail to all owners of property adjoining the street as shown on the county tax records; and

WHEREAS, notice of the closings and of the public hearing has been posted in at least two places along the streets; and

WHEREAS, a public hearing was held in conformance with the aforementioned public notice on the fourth day of March 2021.

NOW, THEREFORE, the City Council of the City of Hendersonville does hereby make the following findings of fact:

1. The closing of the street portion hereafter described are not contrary to the public interest.
2. No individual owning property in the vicinity of the streets or in the subdivision in which it is located would be deprived by the closing of such streets of reasonable means of ingress and egress to his property.

IN CONSIDERATION THEREOF, IT IS HEREBY ORDERED:

1. The following portions of Brown Street is permanently closed and no longer existent as of the effective date of this order:

**BEGINNING at an iron pin set, being the southwest corner of Tract 2 as described in deed book 1580 page 534; thence from said beginning point N 06°16'35" E 1.18' to a calculated and unmarked point, said point being the intersection of the east margin of the right-of-way for North Justice Street and the north margin of the right-of-way for Brown Street; thence with the north margin of the right-of-way of Brown Street S 85°10'57" E 82.28' to a calculated and unmarked point; thence S 84°21'40" E 152.77' to a calculated and unmarked point; thence S 85°12'17" E 45.79' to a calculated and unmarked point, said point being the intersection of the north margin of the right-of-way for Brown Street and the east line of that property as described in deed book 1026 page 394; thence crossing Brown Street and with the east line of said property S 05°00'21" W 20.00' to a calculated and unmarked point, said point being the intersection of the south margin of the right-of-way for Brown Street and the east line of said property; thence with the southern margin of the right-of-way of Brown Street N 85°12'17" W 45.86' to a calculated and unmarked point; thence still with the southern margin of the right-of-way N 84°21'40" W 234.92' to a calculated and unmarked point, said point lying N 04°49'03" E 0.18' from a chiseled "X" in the sidewalk, the northwest corner of the Pardee Hospital tract; thence N 04°49'03" E 18.82' to the point and place of BEGINNING. Having an area of 5,567 square feet, or 0.128 acres as shown on plat by Ownbey Land Surveying, PLLC entitled Exhibit Map Illustrating Proposed Partial Closure of Brown Street for Henderson County dated January 7, 2021.**

2. The plat, depicting the above described portion of Brown Street to be closed, recorded on Plat Slide \_\_\_\_\_ of the Henderson County Registry, is attached hereto and incorporated by reference.
3. The City Clerk shall forthwith cause a certified copy of this order to be filed in the Office of the Register of Deeds of Henderson County.

This order shall take effect the fourth day of March, 2021.

\_\_\_\_\_  
Barbara G. Volk, Mayor, City of Hendersonville

ATTEST:



\_\_\_\_\_  
Angela L. Reece, City Clerk

Approved as to form:

\_\_\_\_\_  
Angela S. Beeker, City Attorney

STATE OF NORTH CAROLINA, COUNTY OF HENDERSON

I, \_\_\_\_\_, a notary public in Henderson County, State of North Carolina, do hereby certify that Barbara G. Volk, in her capacity as Mayor of the City of Hendersonville, Angela L. Reece, in her capacity as City Clerk, and Angela S. Beeker, in her capacity as City Attorney, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this \_\_\_\_\_.

\_\_\_\_\_

My commission expires \_\_\_\_\_



STATE OF NORTH CAROLINA  
COUNTY OF HENDERSONI, \_\_\_\_\_, REVIEW OFFICER OF HENDERSON  
COUNTY, CERTIFY THAT THIS MAP OR PLAT TO WHICH THIS CERTIFICATION IS  
AFFIXED MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.

REVIEW OFFICER \_\_\_\_\_

DATE \_\_\_\_\_

GRID NORTH  
N.A.D. 83 / 2001

LINE	BEARING	DISTANCE
L1	N 06°16'35" E	1.18'
L2	S 84°21'40" E	82.31'
L3	N 85°10'57" W	82.28'

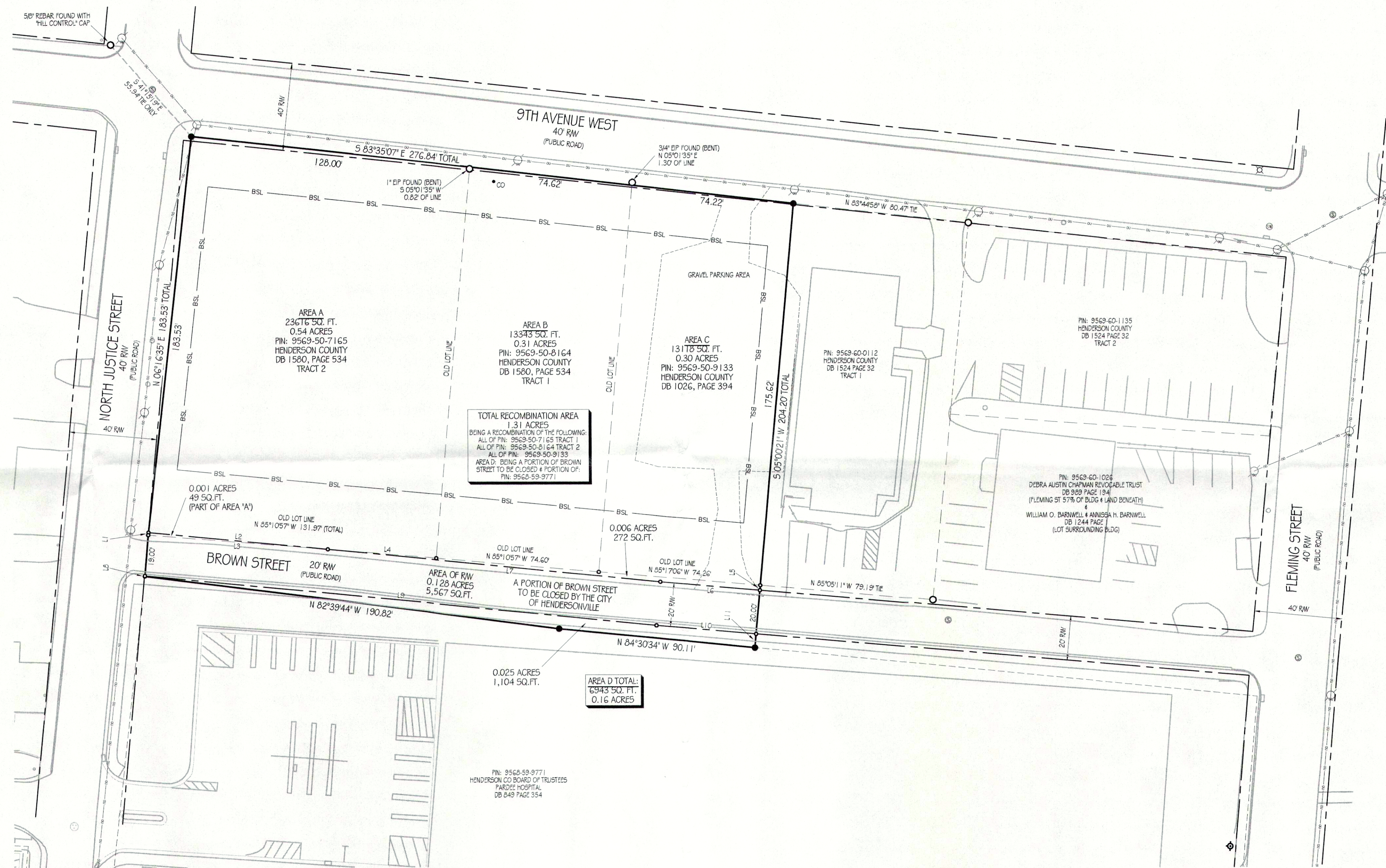
LINE	BEARING	DISTANCE
L4	S 85°10'57" E	49.68'
L5	S 05°00'21" W	2.31'
L6	N 85°12'17" W	45.79'
L7	N 84°21'40" W	152.77'

LINE	BEARING	DISTANCE
L8	N 04°49'03" E	0.18'
L9	S 84°21'40" E	234.92'
L10	S 85°12'17" E	45.86'
L11	S 05°00'21" W	6.20'

LEGEND:

EP = EXISTING REIN. PIPE  
CTP = CRIMPED TOP PIPE  
RSD = RAILROAD SPIKE  
RPS = REIN. PIN SET 3/4" REBAR WITH CAP  
RW = RIGHT OF WAY  
BSL = BUILDING SETBACK LINE  
EP = EDGE OF PAVEMENT  
CMP = CORRUGATED METAL PIPE  
CPP = CORRUGATED PLASTIC PIPE  
RCP = REINFORCED CONCRETE PIPE  
C = CALCULATED UNMARKED POINT  
O = PROPERTY CORNER FOUND (AS NOTED)  
● = SET 3/4" REBAR WITH "J.R. OWNBEY" I.D. CAP  
UT = UTILITY POLE  
WM = WATER METER  
WV = WATER VALVE  
FH = FIRE HYDRANT  
TP = TELEPHONE POSTAL  
SM = SANITARY SINK MANHOLE  
SS = STORM SINKER MANHOLE  
CU = OVERHEAD UTILITY LINE  
E = UNDERGROUND ELECTRIC  
G = UNDERGROUND GAS  
SS = SANITARY SINKER LINE  
TL = UNDERGROUND TELEPHONE  
--- = EDGE OF GRAVEL  
--- = FENCE  
--- = SUBJECT PROPERTY LINE (SURVEYED)  
--- = ADJOINER LINE (LINE NOT SURVEYED)  
--- = BUILDING SETBACK LINE (B.S.L.)  
--- = RIGHT OF WAY LINE (RW)  
--- = TIE LINE

PRELIMINARY  
FOR REVIEW PURPOSES ONLY.  
NOT FOR RECORDING, SALES, OR  
CONVEYANCE



I, JARED R. OWNBEY, N.C. PROFESSIONAL LAND SURVEYOR, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (PROPERTY DESCRIPTION RECORDED IN DEED BOOK 1580, PAGE 534 & DEED BOOK 1026 PAGE 394); THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED BY DASHED LINES AS DRAWN FROM INFORMATION FOUND IN DEED BOOKS AS SHOWN; THAT THE RATIO OF PRECISION AS CALCULATED IS 1:10,000 OR GREATER, THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30(f)(1);

I ALSO HEREBY CERTIFY THAT THIS SURVEY IS OF THE FOLLOWING CATEGORY AS DESCRIBED IN G.S. 47-30(f)(1):

(d) THAT THE SURVEY IS OF ANOTHER CATEGORY, SUCH AS THE RECOMBINATION OF EXISTING PARCELS, A COURT-ORDERED SURVEY, OR OTHER EXCEPTION TO THE DEFINITION OF SUBDIVISION.

WITNESS MY SIGNATURE, LICENSE NUMBER, AND SEAL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, A.D., 20\_\_\_\_.

N.C. PROFESSIONAL LAND SURVEYOR

L-4782  
LICENSE #

NOTES:

\* THIS SURVEY IS OF AN EXISTING PARCEL OF LAND.

\* ALL AREAS CALCULATED BY COORDINATE COMPUTATION METHOD.

\* THIS SURVEY WAS PREPARED WITHOUT BENEFIT OF ABSTRACT TITLE AND MATTERS OF TITLE SHOULD BE REFERRED TO AN ATTORNEY-AT-LAW.

\* THIS SURVEY MAY BE SUBJECT TO ALL RIGHTS-OF-WAYS, EASEMENTS, RESERVATIONS, AND RESTRICTIONS WRITTEN AND UNWRITTEN, RECORDED AND UNRECORDED.

\* ADJOINING PROPERTY OWNER INFORMATION TAKEN FROM THE HENDERSON COUNTY GIS WEBSITE.

\* NO HORIZONTAL CONTROL; FOUND WITHIN 2000'.

\* NO UNDERGROUND UTILITIES WERE LOCATED. CALL 1-800-632-4949 BEFORE DIGGING.

\* BASED ON GRAPHICAL DETERMINATION, A THIS SUBJECT PROPERTY DOES NOT LIE IN FEMA/FIRM SPECIAL FLOOD HAZARD AREA. PER THE NATIONAL FLOOD INSURANCE PROGRAM, FLOOD INSURANCE RATE MAP 5700956800, WITH EFFECTIVE DATE OF OCTOBER 2, 2008.

\* ANY RIVERS, STREAMS, CREEKS, PONDS, LAKES, WETLANDS, ETC., LOCATED ON THIS PROPERTY, SHOWN OR NOT SHOWN HEREON, MAY BE SUBJECT TO BUFFER AREAS. IT IS THE OWNER/DEVELOPER'S RESPONSIBILITY TO HAVE THE AREAS DESIGNATED BY PERSON(S)/FIRM(S) AUTHORIZED, BY THE PROPER AUTHORITIES, TO MAKE SUCH DETERMINATION.

\* ALL DISTANCES SHOWN HEREON ARE HORIZONTAL GROUND DISTANCES UNLESS OTHERWISE NOTED.

\* THE SUBJECT PARCELS LIES WITHIN THE CITY OF HENDERSONVILLE ZONING DISTRICT "M1C" AND IS SUBJECT TO THE FOLLOWING SETBACKS:  
FRONT = 30'  
SIDES = 10'  
REAR = 20'

## OWNER INFORMATION:

AREAS A, B & C  
HENDERSON COUNTY

AREA D  
CITY OF HENDERSONVILLE

A RECOMBINATION SURVEY FOR  
HENDERSON COUNTY  
REFERENCES

BEING A RECOMBINATION OF THE FOLLOWING:  
ALL OF PIN: 9569-50-7165 TRACT 1  
ALL OF PIN: 9569-50-7165 TRACT 2  
ALL OF PIN: 9569-50-9133  
AREA D: BEING A PORTION OF BROWN STREET TO BE CLOSED  
TOTAL AREA = 1.31 ACRES  
CITY OF HENDERSONVILLE  
HENDERSONVILLE TOWNSHIP, HENDERSON COUNTY, N.C.  
DATE: 1/7/2021  
DRAWN BY: RAW CREW CHIEF: JRO  
CHECKED BY: J.R. OWNBEY  
JOB #201216

30' 0 30' 60'  
SCALE 1" = 30'

**OWNBEY**  
LAND SURVEYING, PLLC

FIRM LICENSE NO. P-11189  
522 FLEMING STREET  
HENDERSONVILLE, NC 28739  
PHONE: (828)-595-9668  
MOUNTAINLANDSURVEYOR.COM





CITY OF HENDERSONVILLE

AGENDA ITEM SUMMARY

SUBMITTER:	John Connet	MEETING DATE:	03/4/2021
AGENDA SECTION:	Discussion/Staff Direction,	DEPARTMENT:	Administration
TITLE OF ITEM, Presenter Name, Title:	Request from Flat Rock Playhouse for Special Funding in the FY 21-22 Budget – <i>Council Member Jeff Miller and Lisa Bryant, FRPH Executive Director</i>		
<b><u>SUGGESTED MOTION(S):</u></b>	The City Council directs the City Manager to allocate \$25,000 in the FY 21-22 Budget for Flat Rock Playhouse		

SUMMARY:

Flat Rock Playhouse has recently launched a capital campaign to support the Playhouse until they can open under normal conditions. Lisa Bryant will make a request to the City Council regarding City funding.

**BUDGET IMPACT:** \$25,000

**Is this expenditure approved in the current fiscal year budget?** YES / NO

**If no, describe how it will be funded.**

This would be included in the FY 21-22 Budget

**PROJECT NUMBER:** N/A **PETITION NUMBER:** N/A

**ADDITIONAL PETITION NUMBER:** N/A

**PETITIONER NAME:** N/A

**ATTACHMENTS:**

None



## **Preserving A Legacy + Igniting Your Passion + Revitalizing the Arts**

### **A Case for Support**

Flat Rock Playhouse began 2020 full of hope, excitement and optimism; in the strongest position in more than a decade, artistically and financially. Due to strong leadership by the Board and Administration, incredible collaboration and commitment by the staff and generous support from patrons, donors and sponsors, Flat Rock Playhouse was poised to have its most positive and creative year in decades.

Then the world shattered. Since COVID became the new reality, the team at Flat Rock Playhouse was forced to take an Intermission from its scheduled season, and watch and wait. Thankfully, patrons and sponsors waited with us, gifts and donations continued to see us through, as did federal PPP funding.

But the team did not watch and wait for long. This Intermission was a time to build on our strength at the beginning of 2020, leverage our competencies to make meaningful contributions as a community partner, while remaining nimble and ready as the Covid story unfolded for the theater community.

Worldwide the arts have suffered great losses. Broadway is dark. The West End in London is dark. Artists are struggling with no meaningful employment for the foreseeable future. Theater is an art form that has suffered more than most and will likely take longer to recover. It will be months before people will want to gather in large crowds, sitting right next to a stranger in Row G Seat 5. And the ripple effects are astounding. Not only are actors not working, but neither are designers, technicians, writers, directors, marketers, print shops, costumers, camera persons, box office personnel...and on and on it goes.

### **Preserving A Legacy**

During this unprecedented time, we have been learning and growing. We have become stronger by revitalizing our education program, we have increased our capabilities such as video production and virtual platforms, we have continued building responsible financial policies that create future sustainability, we have danced with donors and sponsors in unique and creative ways, we have broadened our vision around diversity and inclusion and we have offered our loyal patrons entertainment during days of isolation.



## Igniting Your Passion

Looking to the future, we have an opportunity to continue to grow and become stronger. As the State Theater of North Carolina, we are in a unique position to bring high impact and relevant partnerships to life. We have an opportunity to partner in new ways, with Henderson County Public Schools and Boys and Girls Club, to serve our children. We have an opportunity to partner with our senior living communities to provide performing arts to help deal with isolation and depressions our seniors are feeling. We have an opportunity to create new works of art and to support artists who have been impacted disproportionately by COVID.

## Revitalizing the Arts

To stay strong and continue to build for the future, we need you now. Our greatest need is to emerge from this trying time with a sustainable and new normal for Flat Rock Playhouse. While the stage remains dark and there is minimal production revenue early in 2021, your donation will help to sustain us.

### We need to:

- Maintain and build back the staff as we carefully build back productions
- Support and extend education programs for students and adults
- Upgrade technology, so necessary in this new world
- Deal with aging facilities and campus
- Support the ongoing operational needs
- Underwrite production costs and prepare for the next season
- Build our infrastructure

We need to keep the momentum going which began in 2019, taking us into 2020 with great strength and excitement. With your help, we have navigated 2020 with a flexibility and nimbleness which allowed us to pivot, try new things and continue to create. Planning for 2021 we will further gain strength with your help and commitment to keep the arts alive. Not just here locally, but across the region and state.

**Please join us in this campaign to remain ROCK SOLID for years to come!**



## Have you heard.....

### ***Live Theater***

- Between 75%-80% of FRP's income historically comes from ticket sales (national benchmark is 50 % from ticket sales and 50% from gifts, grants and investments)
- FRP is a producing theater which means all productions are built on property (sets, costumes, lighting, sound, props, and more.)
- FRP artistic team needs at least 1.5 months prior to opening day to produce a show. Most of the pre-planning (casting, designing) can happen as early as 6 months to a year before the audience ever arrives.
- To break even on a production, we need to have 65%-70% of our seats filled.
- As the State Theater of North Carolina, FRP does not have a line item in the state budget.
- FRP is an Equity theater which means we audition and hire actors through Actors Equity and must comply with our contracted agreements and their regulations and requirements.
- FRP is second only to Biltmore as a tourist destination in Western North Carolina and #1 in Henderson County according to Henderson County Tourism Development Authority.
- FRP generates \$10-\$14 million in the local economy according to Henderson County Tourism Development Authority.

### ***Facilities***

- FRP owns 12 acres of property and 12 buildings on the campus.
- Many of the buildings are 50+ years old.
- FRP owns and maintains 3 vehicles for use by actors per the agreement with the Actor's Equity Union. Additional vehicles are needed in the high season to accommodate this personnel.
- Buildings need to be maintained and insurance carried even if not in use during this time to the tune of roughly \$3000-\$5000 per month.

### ***Education***

- FRP employs a fulltime Education Director.

- FRP currently has 85 students of all ages enrolled in online classes and workshops this semester.
- Broadway actors are among the faculty.
- Tuition covers only 35%-40% of expenses each semester.

### **Staff**

- Prior to the pandemic there were 33 staff members employed year-round at FRP.
- 22 staff were initially furloughed then permanently laid off in 2020 (Two positions were added back in August of 2020 to help grow education.)
- 13 individuals remain on staff, working at 80% pay. They oversee development, marketing, financial and facilities management, education and virtual production. This is a reduction of 65% in staff costs which includes benefits.

### **Overhead and fixed costs**

- At this time, monthly overhead costs average \$25,000 which includes:
  - Service contracts for phone, printers, ticketing software
  - General Liability insurance for people, property and equipment
  - Mortgage, lease payments and debt service
  - Facility maintenance and utilities
  - Storage facility for props, sets and costumes
- FRP refunded \$350,000 in tickets sales and we are carrying \$270,000 in gift certificates as a liability due to the pandemic in 2020.

### **So, why is your gift today so critical to Flat Rock Playhouse?**

- Until FRP can produce again which creates ticket revenue, we are *totally reliant on gifts and grants* to cover monthly overhead and staff costs right now.
  - Thanks to excellent fiscal management by leadership and the Board, FRP weathered the 2020 shut down with gifts, grants, COVID Relief funding and cash reserves. As we head into the second year of the pandemic, the reserves are dwindling quickly. Gifts and grants will get us through till we can produce again.
  - Remaining FRP staff are busy creating and offering education programs; creating ongoing communication with community partners, patrons and donors; writing grants, working with sponsors and donors and managing the Rock-Solid Campaign; maintaining facilities and property and providing virtual encounters during this interim time; and planning various options for a return to full production when allowed.
  - If FRP were to close down completely, it would take a full 6 months or more to acquire necessary funding to restart and prepare/repair the unused facilities and property, recapture our students, and reassemble a full staff to create a new season of live performances and music.

- In order for FRP to produce again, we are *totally reliant on gifts and grants* to make sure we move into a new season with capital to produce the first show – our goal is to begin 2022 with \$300,000 available for productions
  - Our Artistic Director and Board have created a plan to reopen, contingent on federal and state regulations, Actors Equity requirements for cast and crew to safely return to the stage, and our ability to ensure that patrons and volunteers are able to return safely.
  - Prior to tickets going on sale, there are upfront costs to cover auditions in New York, secure licensing for shows, secure contracts for cast and crew, and hiring the team for production design, set development, lighting, sound and staging and costuming.
- In order for FRP to be back in your lives, ***we need YOU*** to stand with us with your financial support and encouragement.





## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

<b>SUBMITTER:</b>	Lew Holloway	<b>MEETING DATE:</b> March 4, 2021
<b>AGENDA SECTION:</b>	NEW BUSINESS/ Staff Direction	<b>DEPARTMENT:</b> Community Development Department
<b>TITLE OF ITEM, Presenter Name, Title:</b>	Berekley Road & North Main Street Intersection – <i>Lew Holloway, Community Development Director</i>	

**SUGGESTED MOTION(S):** N/A

### SUMMARY:

In developing the staff report for the Duncan Terrace project staff became aware of a NC DOT study of this intersection which has not previously advanced out of an initial review level with DOT. Considering existing and future potential development in this corridor staff felt it would be beneficial to bring awareness to this study. In addition, we are seeking direction from City Council regarding potential staff efforts to have the project added to the State Transportation Improvement Program (STIP) for eventual construction.

**BUDGET IMPACT:** N/A

**Is this expenditure approved in the current fiscal year budget?** YES / NO

**If no, describe how it will be funded.**

**PROJECT NUMBER:** N/A

**PETITION NUMBER:** N/A

**ADDITIONAL PETITION NUMBER:** N/A

**PETITIONER NAME:** N/A

**ATTACHMENTS:** None



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

<b>SUBMITTER:</b>	John Connet	<b>MEETING DATE:</b> 03/04/2021
<b>AGENDA SECTION:</b>	Discussion/Staff Direction	<b>DEPARTMENT:</b> Administration
<b>TITLE OF ITEM, Presenter Name, Title:</b>	Request by Bird Ride to Provide Share Ride Scooters in Downtown Hendersonville – <i>John Connet, City Manager</i>	
<b><u>SUGGESTED MOTION(S):</u></b>	NA	

### SUMMARY:

Bird Ride has contacted the City regarding coming to Hendersonville. I felt that City Council should hear the presentation and direct City staff regarding the deployment of Bird Scooters in Downtown Hendersonville.

**BUDGET IMPACT:**     \$

**Is this expenditure approved in the current fiscal year budget?** YES / NO

**If no, describe how it will be funded.**

**PROJECT NUMBER:** N/A

**PETITION NUMBER:** N/A

**ADDITIONAL PETITION NUMBER:** N/A

**PETITIONER NAME:** N/A

### ATTACHMENTS:

Bird Scooter Introduction

City of Gastonia Agreement with Bird Scooter

City of Gastonia Ordinance



# Hello, Hendersonville

2021

Section 9, Item C.



271

# What is Bird?

Bird is a last-mile, stand-up electric vehicle sharing company dedicated to bringing affordable, environmentally-friendly transportation solutions to communities everywhere.

**Our mission is to get people out of cars and:**



Solve the last-mile challenge by connecting more residents to transit options.



Reduce congestion and over-reliance on single occupancy car trips



Improve air quality and reduce Greenhouse Gas emissions

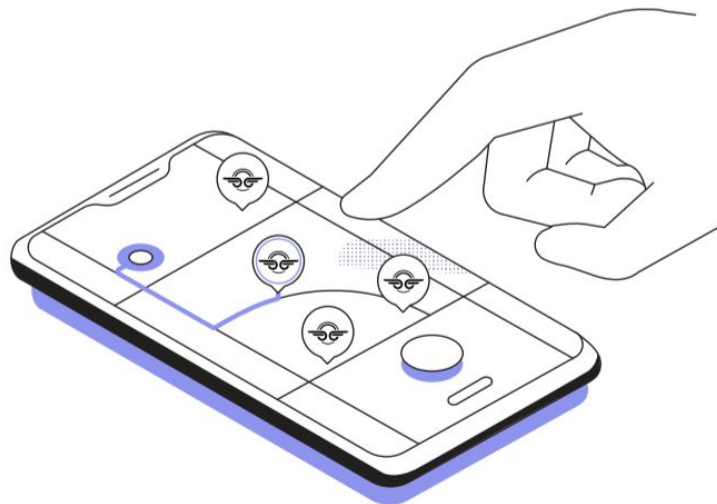


Improve the overall quality of life in cities



# How it works

Using the Bird smartphone app, riders find the closest Bird scooter on a map, unlock it and complete the safety tutorial to start their ride. It costs \$1 to start, then a per minute fee.

**1****FIND BIRDS  
ON THE MAP****2****SCAN QR TO  
BEGIN RIDE****3****WATCH SAFETY  
TUTORIAL****4****ENJOY THE  
RIDE!**

# Bird Scooter

Section 9, Item C.

BirdZero	
Braking	Drum Brake + Regenerative Brake
Lights	Front/Rear LEDs
Weight	44.66 lbs.



UNIQUE ID



SAFETY DECAL

### Ride Safely

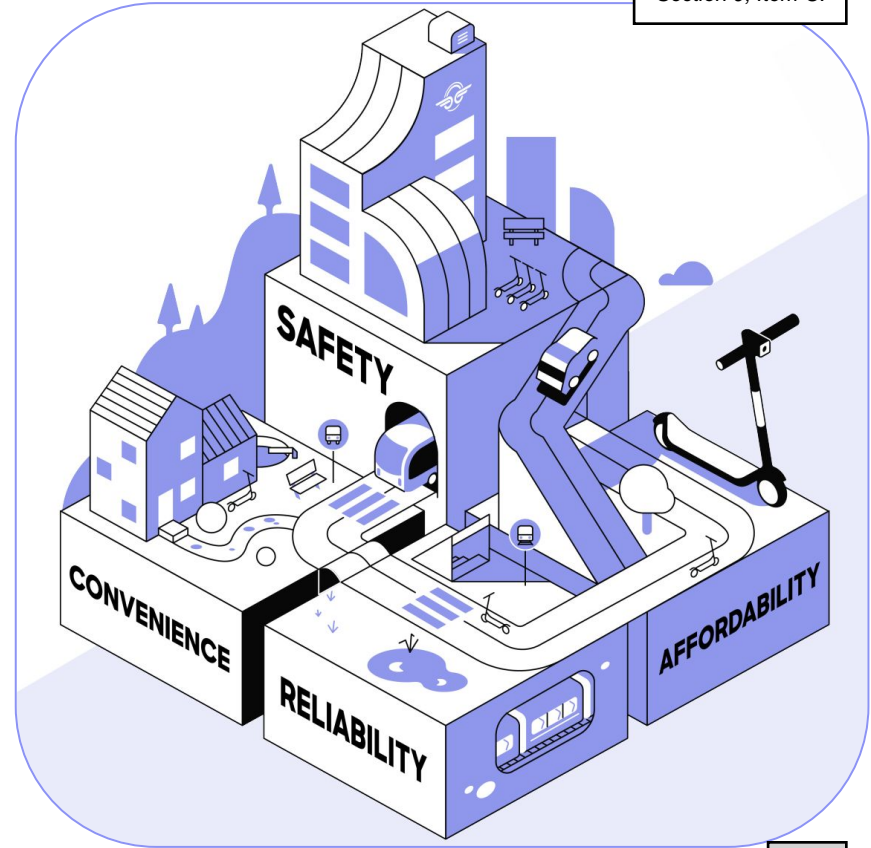
Helmet Required  
License Required  
No Riding on Sidewalks  
No Double Riding  
18+ Years Old

HELLO@BIRD.CO  
1-866-205-2442

# Transportation Benefits

Section 9, Item C.

- ✓ **No cost** micromobility solution for the city
- ✓ Provide a sustainable, open-aired transportation option
- ✓ Reduce congestion & carbon emissions
- ✓ Supplement bus and transit trips
- ✓ Alternative parking solution
- ✓ Provide increased access to businesses throughout the city
- ✓ Establish a multimodal transportation network



275

# Our Approach

Section 9, Item C.

We partner closely with cities to design solutions that work for your community.

## YOUR TEAM



Chris Stockwell  
Account Partner



Sajni Patel  
Account Manager

### Get to know each other:

Understand where Bird fits into the local transportation ecosystem.

### Operating Plan:

Decision to move forward and local operational partner outreach started.

### Ongoing:

Your dedicated Account Manager will provide ongoing support and serve as your main point of contact for all city requests.

### Setting Expectations:

Align on how Bird can best serve your city based on city input and Bird data.

### Launch Day:

Introduce a new transportation option to town.



# Localized Operations

We work with a **local entrepreneur** from the community to manage the fleet on the ground, and in exchange they earn money on each ride.

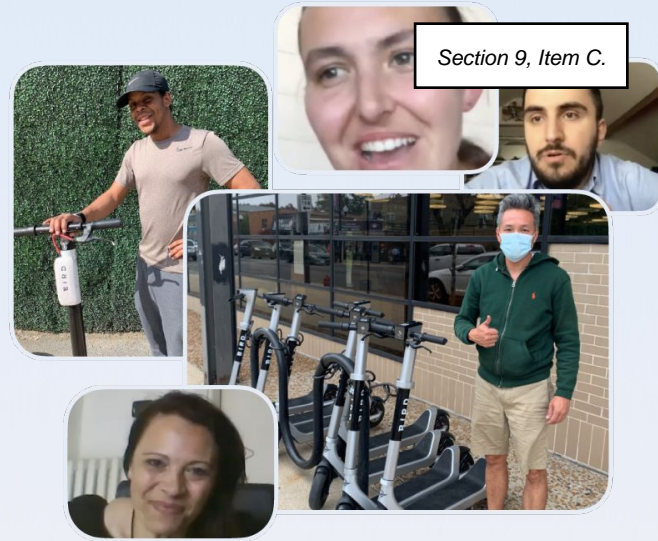
## How cities benefit:

### Local Touch:

- ✓ Deep community ties, local pride, and fast issue resolution
- ✓ Nuanced knowledge of where to deploy
- ✓ Economic Opportunity

### Backed by the Industry Leader:

- ✓ World-class technology & compliance tools
- ✓ Operational know-how
- ✓ Industry's Safest Vehicles



Section 9, Item C.

“

I like being my own boss, the flexibility of setting my own schedule and being able to hire my nephew because he also needed a job. I also like being part of the growing micromobility industry. It's in line with my values regarding city transportation solutions.

- Mark, Azbri Productions, Nashville

”

# The Local Impact



56%

of rides have connected to a local businesses



\$70K+

average take-home earnings from local entrepreneurs partnering with Bird.



16%

more jobs accessible

Section 9, Item C.



278

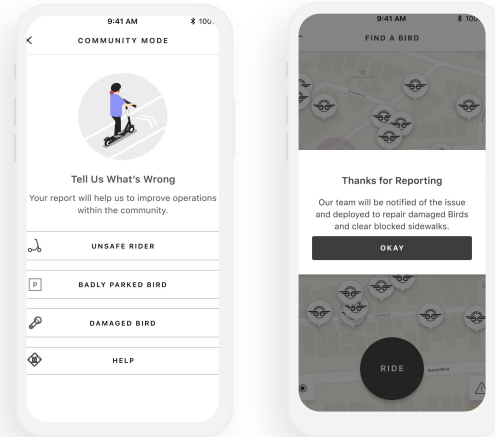
# Customer Service

Section 9, Item C.

Our customer service phone number along with our e-mail address are clearly displayed on each of our scooters to report any concerns or to ask questions.



Our **Community Mode** enables both riders and non-riders to notify Bird of improperly parked scooters directly through the Bird app.



# Community Access

In order to bring sustainable transportation to more people in the communities where we operate—we've rolled out Bird's Community Pricing program.

Our [Bird Access](#) program is an option for low-income riders that offers five (5) 30-minute rides per day for only \$5 a month for those who are enrolled or eligible for a government assistance program.

Our [Community Pricing](#) also offers 50% off rides to veterans, senior citizens and select community and non-profit groups.





# Leading the way on innovative solutions for cities

Section 9, Item C.

## Warm Up Mode

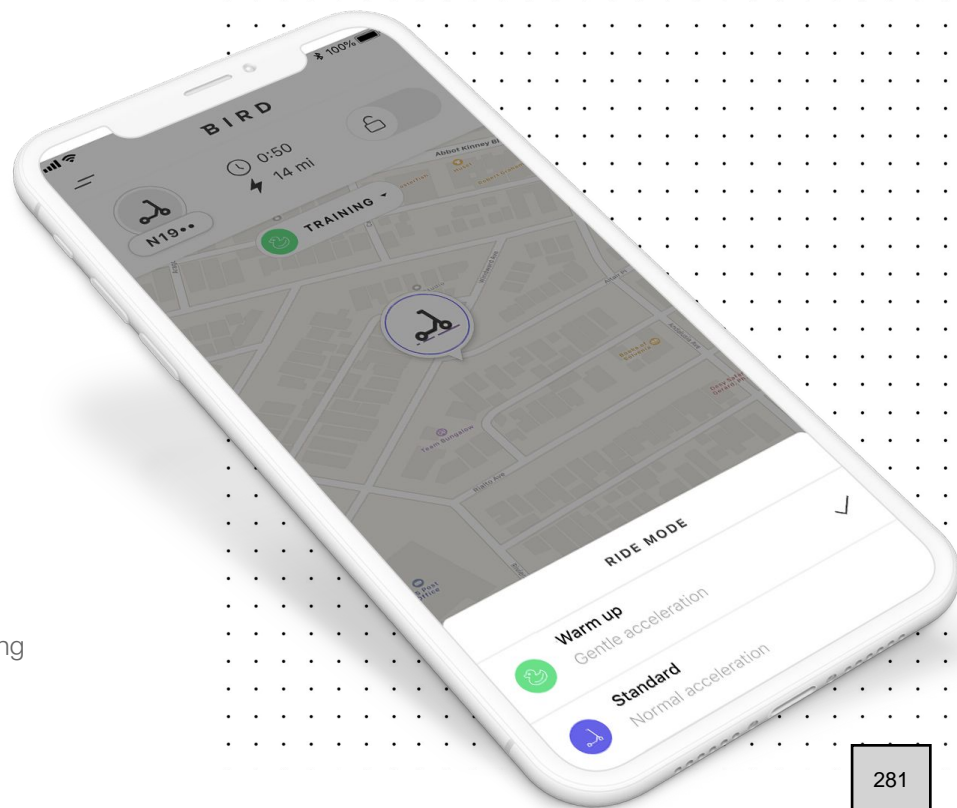
This feature offers a gentle acceleration profile that helps users learn to ride safely and confidently.

## Quick Start

An industry-first feature that automatically detects when a Bird is within range and offers riders the opportunity to unlock it with the tap of a button.

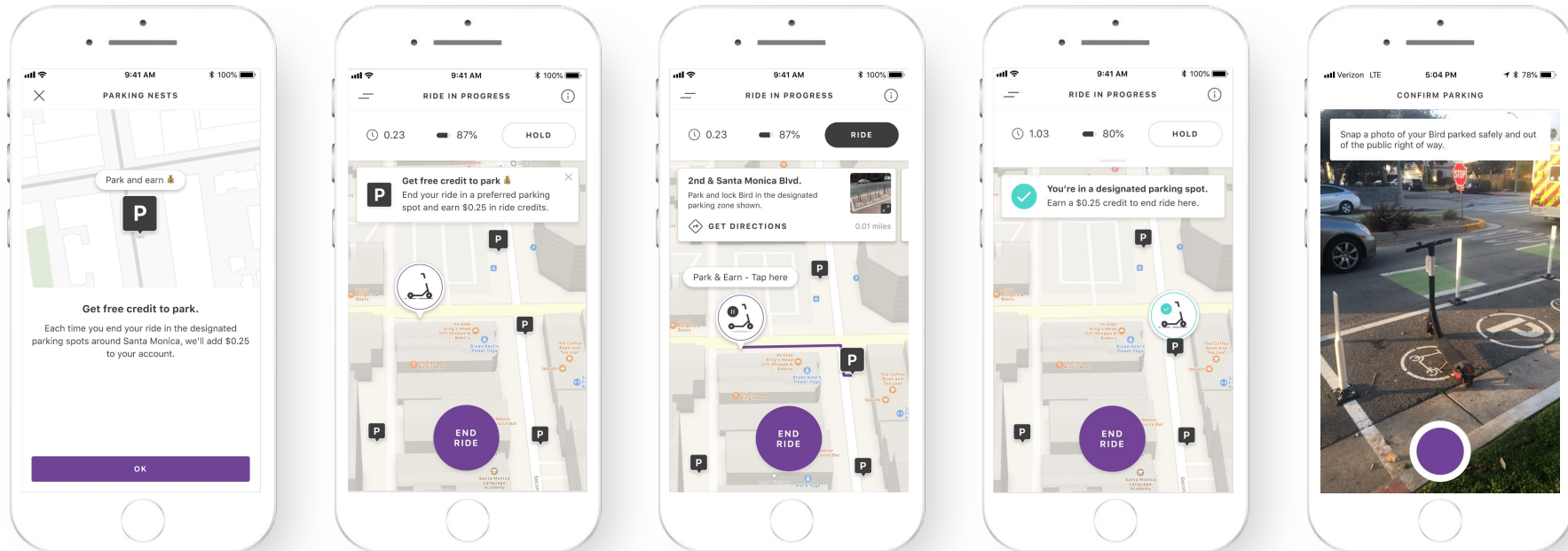
## Parking Management

Bird offers a comprehensive suite of parking tools that bridges the gap between technology and infrastructure by both directing and incentivizing riders to park in city-designated areas.



# Recommended Parking Areas

Always know where to park



Identify Locations

Direct Riders

Verify Parking

282

# Comparable cities:

Section 9, Item C.

## MOREHEAD, KY



**Pop. 7.5K**

**Launch date:** October 2020

**Goal:** With limited downtown transit options (i.e. buses), create a reliable, local transportation mode.

## PITTSBURG, KS

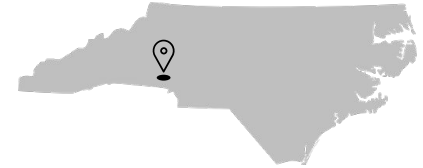


**Pop. 20K**

**Launch date:** November 2020

**Goal:** Create a connection between downtown and the local university campus.

## GASTONIA, NC



**Pop. 75K**

**Launch date:** January 2021

**Goal:** Build a flexible transportation network to service the newly built baseball stadium and town center

# Thank you

Chris Stockwell  
Senior Manager  
cstockwell@bird.co





**ORDINANCE ESTABLISHING REGULATIONS FOR MOTORIZED SCOOTERS  
AND ELECTRIC ASSISTED BICYCLES AND THE OPERATION  
OF SHARED ACTIVE TRANSPORTATION SYSTEMS  
IN THE CITY OF GASTONIA**

**WHEREAS**, the City Council desires to establish regulations to allow the use of portions of the right-of-way and city real property by motorized scooters and by privately owned shared active transportation systems; to maintain the rights-of-way clear of unnecessary obstructions; and to protect the health, safety, and welfare of the citizens of Gastonia;

**NOW THEREFORE**, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GASTONIA THAT:

**Section 1:** The Code of Ordinances of the City of Gastonia is hereby amended by adding a new Chapter 21 as follows:

**Chapter 21. - SHARED ACTIVE TRANSPORTATION SYSTEMS**

**Sec. 21-1. - Adoption of definitions in general statutes.**

The definitions of the following words set out in G.S. 20-4.01, as amended from time to time, are adopted as part of this article: electric assisted bicycle and vehicle.

**Sec. 21-2. - Definitions.**

The following words, terms and phrases, when used in this article, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

*Bicycle* means a non-motorized vehicle with two or three wheels in tandem, a steering handle, one or two saddle seats, and pedals by which the vehicle is propelled.

*Customer* means a person that rents or operates a shared device from a shared active transportation system permittee.

*Device operating area* means the right-of-way (for all shared devices) and greenway trails (for bicycles only) where operation of a shared device is authorized by a permit.

*Department* means the city's planning department.

*Director* means the director of the city's planning department or her/his designee.

*Electric assisted bicycle* means a bicycle with two or three wheels that is equipped with a seat or saddle for use by the rider, fully operable pedals for human propulsion, and an electric motor of no more than 750 watts, whose maximum speed on a level surface when powered solely by such a motor is no greater than 20 miles per hour.

*Greenway trail* means a pathway designated by signage as a public trail for bicycles and pedestrians and not for motorized vehicular use by the general public. A greenway trail is not located within the right-of-way of a street.

Motorized scooter means a vehicle that is steered by a steering handle, designed to be stood upon by the operator while the vehicle is in operation, and powered by a motor capable of propelling the vehicle at a speed no greater than 18 miles per hour on a level surface; and whose wheels have diameters of ten inches or less.

Operate means, when used in direct reference to a shared device, to use the shared device for transportation. Operate includes to park a shared device.

Permit means a permit issued by the department pursuant to this article for a permittee to conduct a shared active transportation system.

Permittee is any person that conducts a shared active transportation system.

Rebalance means to move shared devices from one location. to another, generally for the purpose of avoiding having too many devices in one location.

Right-of-way means the area owned or maintained by the City of Gastonia, State of North Carolina, a public utility, a railroad, or a private concern for the placement of such utilities and/or facilities for the passage of vehicles or pedestrians, including roads, pedestrian walkways, utilities, or railroads. Right-of-way includes the following, if they satisfy the foregoing definition: public street, highway, bridge, alley, bike lane, sidewalk, trail, median, gutter, or shoulder.

Shared active transportation system (SATS) means a business that provides one or more shared devices for rentals where, by design of the permittee, the shared devices are intended to be parked in a device operating area, but not connected to a dedicated docking station, when not rented by a customer.

Shared device means bicycle, electric assisted bicycle, or motorized scooter rented by a permittee to customers through a SATS.

### **Sec. 21-3. - Authorization.**

Unlawful to operate SATS without authorization. It is unlawful for any person to conduct a shared active transportation system within the city except pursuant to this article.

### **Sec. 21-4. - Permits required; issuance; nature of permits.**

- (a) No person may conduct a SATS in the city who does not hold a valid permit. A permit will be issued if the department finds that the application meets the requirements of this article for issuance of the permit, including payment of applicable fees, which shall be set from time to time by city council. Permits will be effective for a period of one year and are renewable subject to the same standards of review as for the initial permit. The director is authorized to write terms and conditions in permits as appropriate to effectuate this article, including limiting the shared device fleet size of a permittee to improve permit compliance.
- (b) A permit does not grant exclusive rights to operate a shared active transportation system in device operating areas.
- (c) Each permittee shall comply with its permit.

### **Sec. 21-5. - Equipment and shared devices requirements.**

- (a) When used in a shared active transportation system, bicycles and electric assisted bicycles shall meet the standards in (i) the Code of Federal Regulations (CFR) under Title 16, Chapter

II, Subchapter C, Part 1512 - Requirements for Bicycles, as amended; and (ii) the standards in ISO 43.150 - Cycles, subsection 4210, as amended.

- (b) All shared devices shall comply with the applicable equipment and vehicle registration requirements of N.C.G.S. Ch. 20.
- (c) Permittees shall provide, on every shared device, contact information of the permittee including the website and phone number.
- (d) All shared devices must be equipped with technology, such as GPS, that allows the shared device to be located and tracked by the permittee at all times.
- (e) Permittees shall see that every shared device prominently displays a unique and easily read serial number or other identifier.

**Sec. 21-6. - Operation of SATS.**

- (a) A permit is valid for conducting a SATS within device operating areas only, and with the consent of the owner or lawful occupant on other real property. It is unlawful to operate a shared device on any real property outside device operating areas without consent of the property's owner or lawful occupant. Each permittee shall have at all times the ability to discover when its shared devices are operated outside device operating areas and to communicate electronically that information to customers who have operated a shared device outside device operating areas. Permittees shall communicate to customers at the end of a trip when the shared device has been operated outside device operating areas.
- (b) Permittees shall not restrict the operation of shared devices to only certain geographical areas of the city unless approved by the city.
- (c) Permittees shall not discriminate against low and moderate income persons in connection with permitted activities and conducting its SATS in the city. Permittees must deploy and maintain a sufficient number of shared devices to satisfy customer demand within census tracts of low and moderate income areas of the city as defined in the permit.
- (d) Each permittee shall implement programs to reduce barriers to low-income persons to rent its shared devices by providing diverse payment options, including options for persons with neither a smart phone nor a credit card to rent its shared device. These options shall be made accessible to low-income persons at multiple locations within the permittee's area of operation.
- (e) The director is authorized to limit the total number of shared devices, including the mix of shared devices, within device operating areas in order to (1) maintain the integrity of the city's entire transportation system; (2) keep rights-of-way free and clear of unnecessary obstructions; and (3) protect the health, safety, and welfare of the citizens of the city.

**Sec. 21-7. - Permittee communication with customers.**

- (a) Permittees shall include substantially the following information for prospective customers on the permittee's mobile app and web site, and also displayed on the shared device for which the information is applicable:
  - (1) Persons operating bicycles and electric assisted bicycles are encouraged to wear helmets.

- (2) Persons operating motorized scooters must be at least 16 years old and wear a helmet.
- (3) NC law requires persons operating the device to follow applicable traffic laws.
- (4) City ordinance prohibits operating the device on sidewalks.
- (5) Operating electric assisted bicycles and motorized scooters is prohibited on greenway trails.
- (b) Permittees shall adopt and implement programs to educate customers on how to safely operate shared devices, including knowledge of laws applicable to operating a shared device in the city.
- (c) Permittees shall communicate to prospective customers sufficient information on charges that may be made, including rates and dollar amounts of fees, including rental charges, minimum charges, maximum charges, charges for additional time, and charges for overage periods. If charges may be based on time or distance, information on the rate per minute, hour, mile, or other applicable time period or distance shall also be provided.
- (d) Permittees shall have a 24-hour phone number for customers to report safety concerns and complaints, and to ask questions.
- (e) All communications required by this article to be made by a permittee to prospective customers and customers shall be in clear, plain English and displayed in a sufficiently prominent way that the communication is obvious.

**Sec. 21-8. - Insurance, indemnification, security, and liability.**

- (a) At all times when conducting a SATS, a permittee shall maintain insurance in effect and provide proof of such insurance, both as required by the department.
- (b) Every permittee shall defend and indemnify the city from and against all claims and liabilities that arise from the acts and omissions of the permittee and its customers in device operating areas, to the extent the acts and omissions relate to the operation of shared devices.
- (c) Permittees shall provide the city with a performance bond, or other security acceptable to the director, in an amount determined by the director to be sufficient to cover the obligations of the permittee under the permit. The form of the bond is subject to approval by the department after it consults the city attorney, and shall be executed by one or more surety companies legally authorized to do business in the State of North Carolina. The bond shall guarantee the performance of all the obligations of the permittee under its permit. If the amount of the bond is set according to the number of deployed shared devices, when a permittee intends to increase the number of deployed devices, the permittee shall submit a revised performance bond, or other security acceptable to the director, before the additional shared devices may be deployed.
- (d) Each permittee shall be responsible for the costs of repair to public property damaged by its customers' use of its shared devices.

**Sec. 21-9. - Parking, placement, rebalancing, and removing of shared devices.**

- (a) Shared devices shall not be parked in a way that may impede the regular flow of vehicular and pedestrian travel in device operating areas or otherwise cause a violation of the City Code,



including this article. Permittees shall inform customers how and where to park a shared device in the manner required by this article. Shared devices shall be upright when parked. The permittee shall remove or re-park every one of its shared devices that is parked in violation of the permit or the City Code in accordance with the following:

- (1) During the time period of 6:00 a.m. to 6:00 p.m. on weekdays, not including legal holidays, the permittee shall remove or re-park within two hours of receiving notice from any person via mobile or other web application or phone number.
- (2) During all other times, the permittee shall remove or re-park within 12 hours of receiving notice from any person via mobile or other web application or phone number.
- (b) At any time the city may make it unlawful to park shared devices in specific locations or portions of device operating areas or public property by action of the city council.
- (c) Permittees shall remove every bicycle and electric assisted bicycle before it is parked in the same location for more than seven consecutive days.
- (d) Permittees shall remove every motorized scooter before it is parked in the same location for more than 72 consecutive hours.
- (e) Permittees shall not deploy a shared device that is inoperable or unsafe to operate. Permittees shall remove from device operating areas within 24 hours of notice any inoperable shared device or any shared device that is not safe to operate.
- (f) Each permittee shall remove and secure its entire fleet of shared devices from device operating areas for all time periods for which the National Weather Service or its successor agency forecasts (i) sustained winds of 40 mph or higher for one hour or more, or (ii) wind gusts of 58 mph or higher for any duration in the city.
- (g) Each permittee shall compensate the city for the costs incurred by the city in removing and storing its shared devices that have been improperly parked or rebalanced, including under the circumstances where a permittee fails to remove its shared devices in violation of its permit or in case its permit is terminated or otherwise not in effect.
- (h) Permittees shall provide the department with contact information so that it can order rebalancing. The city has the right to determine specific locations for rebalancing shared devices, as well as times when the shared devices must be removed from device operating areas.
- (i) If the city relocates or removes a permittee's shared devices because of a violation of a permit or this article, the permittee shall pay a fee in an amount set from time to time by city council.

#### **Sec. 21-10. - Reporting.**

- (a) Each permittee shall provide the city, or to such other persons that the city may specify, with data regarding customers and shared device trips, in the format and timeline specified by the director. The data shall include real-time availability data for all devices, archival trip data for all devices including the frequency and location of shared device trips during the permit period, including identification of the shared device by type. This data will be used to support safe, equitable, and effective management of the shared active transportation system throughout the city. The permittee shall communicate to prospective customers that this data will be collected and shared with the city.

- (b) Each permittee shall compile, for all of its shared devices deployed in the city, records of collisions or accidents reported to the permittee, the police, or the NC Department of Motor Vehicles, and records of maintenance and repair. Records shall be shared with the city when and in the manner required by the permit.

**Sec. 21-11. - Revocation or non-renewal of permit; review of decisions.**

- (a) Revocation or non-renewal; grounds and procedure for revocation or non-renewal. The director may, (i) at any time, revoke any permit issued to a permittee or (ii) refuse to renew a permit issued to a permittee under this article and require that permittee remove its entire fleet of shared devices from city designated areas, if the director finds:

- (1) Fraud, misrepresentation, or a knowingly false statement with respect to a material fact in the permit application or permit renewal application;
- (2) The permittee or the permittee's agent or employee violated this article or the terms of the permit; or
- (3) The permittee's customers operate the shared devices in such a manner as to create unsafe traffic conditions, cause a breach of the peace or public nuisance, violate any applicable law, or interfere with the rights of property owners abutting the right-of-way, and such operation is done to such an extent that the health, safety, and welfare of the citizens or their property is at substantial risk if the permit is allowed to continue in effect;

Except in case of emergency or impracticality, before revoking the permit or denying renewal of a permit, the director shall give reasonable notice to the permittee and an opportunity to be heard. A permit may be revoked or permit renewal denied pursuant to this section even if the person making the findings pursuant to this section had made a contrary finding before the permit was issued or renewed, regardless of whether the facts upon which the finding is made had changed.

- (b) Notice.

- (i) The director shall cause a written notice of the revocation or denial of renewal to be served on the permittee by first-class mail, email or other electronic means, or fax, to the address or number shown on the permit application, or by any method allowed by law for service of a summons in a civil action. The person serving the notice may be any person who is 18 years or older, including the director.
  - (ii) If the director finds that time before a proposed hearing is insufficient to allow service in accordance with subsection (i), the director may, as an alternative to the means listed in subsection (i), notify the permittee by telephone of the grounds for revocation or denial of renewal and of the right to appeal, provided a written notice is also sent in accordance with subsection (i) on or before the next day that is not a holiday.
  - (iii) The notice described in subsection (i) shall set forth a brief statement of the grounds for revocation or denial of renewal and of the right to appeal.
  - (iv) The director shall see that a written record is made to show: compliance with this section (b).
- (c) Retention of fees; waiting period. If the city revokes a permit, the city shall retain the fee, if any, paid for the permit. In the case of a denial of a permit renewal, the city shall either not accept the renewal fee or return the renewal fee to the permittee. The person whose permit is

revoked or renewal denied for grounds stated in subsection (a)(1), (a)(2), or (a)(3), regardless of whether additional grounds existed, shall not be issued a permit under the same section of this article for the remainder of the time for which the revoked permit had been issued or, in the case of a denial of a permit renewal, for the term of the renewal period. The director shall use reasonable judgment in deciding whether two applicants are the same so that, for example, technical changes in the applicant, or where the applicant one year is a corporation and the next year it is an affiliate or subsidiary of the same corporation, may be disregarded.

- (d) *Review of decisions.* If the director denies the issuance of a permit, revokes a permit, denies renewal of a permit, issues a permit with terms deemed unacceptable to the permittee, or makes any other decision pursuant to this article with respect to a permit, the applicant or permittee may have that decision reviewed by filing a written request in the office of the director within ten days of the date of the notice of decision. The director or a person designated by the city manager for this purpose who is neither the person who made the decision complained of nor that person's subordinate, shall be named as the hearing officer to conduct a hearing in order to review the decision. The director shall cause a written notice of the time and place of the hearing to be given or sent to the person seeking review. The failure of the hearing officer to set a hearing within 30 days of the filing of the written request for review, or to deliver a decision within 15 days after the hearing, or within any shortened periods set by the director, shall be deemed a denial of the relief sought and affirmance of the action for which review was sought. The permittee and the director may appear in person or through counsel and may present evidence, provided, however, that the hearing officer shall have the authority to conduct the hearing in the manner and for the period of time that he or she deems appropriate to make a decision. The hearing officer may affirm, deny, or modify the decision complained of, and the hearing officer's decision shall be final. Failure to request a review within the time and in the manner provided for in this subsection shall constitute a waiver of the right of review. The permit may be used during the review process only if the director determines that its use would not constitute a substantial threat that the grounds described in subsection (a)(2) or (a)(3) will occur, re-occur, or continue during the review process.
- (e) *Certiorari.* A decision by the hearing officer is subject to review by the Gaston County Superior Court by proceedings in the nature of certiorari. The petition for review shall be filed with the clerk of Superior Court within the earlier of 30 days after the denial and affirmance are deemed to occur pursuant to subsection (d), or within 30 days after the decision is delivered to the applicant. Delivery is made by hand-delivery of the decision to the applicant, or by first-class or certified mail to the address provided on the application. Delivery by mail is complete when placed in the custody of the U.S. Postal Service.

**Sec. 21-12. - Penalties for violations.**

- (a) *Assessment of civil penalties.* The director shall assess civil penalties for violation of this article, including the terms of a permit. The director shall give the offender written notice of the nature of the violation and the amount of the civil penalty. The notice shall be served by any method allowed by law for service of a summons in a civil action, provided that the person delivering the notice may be any person who is 18 years or older, including the director. The civil penalty shall be \$200.00 per violation plus the costs incurred by the city resulting from the violation, including costs of removing shared devices from the right-of-way.

- (b) *Review of assessment of civil penalties.* Any person who has been assessed a civil penalty under this article may have that assessment reviewed by filing a written request in the office of the director within ten days of the date of service of the notice of the civil penalty. A person designated by the city manager for this purpose who is neither the person who assessed the civil penalty nor that person's subordinate shall be named as the hearing officer to conduct a hearing in order to review the assessment. The director shall cause a written notice of the time and place of the hearing to be given or sent to the person seeking review. The person assessed the penalty and the director may appear in person or through counsel and may present evidence, provided, however, that the hearing officer shall have the authority to conduct the hearing in the manner and for the period of time that he or she deems appropriate to make a decision. The hearing officer may affirm, deny, or modify the decision complained of, and the hearing officer's decision shall be final. Failure to request review within the time and in the manner provided for in this subsection constitutes a waiver of the right of review.
- (c) *Collection of civil penalties.* If the offender does not pay the civil penalty within ten days after having been served with the notice of the civil penalty, the director may collect the civil penalties by causing to be commenced civil actions in the nature of debt. The director may compromise such claims, before or after commencement of the civil action, if the director finds there is a reasonable probability that the city will be unable to collect the entire amount of the claim, that the amount offered in compromise of the claim reasonably reflects either the amount of money available from the offender or the amount the city is likely to recover in the civil action, taking into account the resources required to pursue the civil action, and that the facts and circumstances of the events giving rise to the claim, taken as a whole, indicate that the amount offered in compromise is fair and reasonable. Using the foregoing standards, in an appropriate case, the director may abandon a claim.
- (d) *Criminal remedies.* Except for provisions, if any, of this article that regulate the operation of shared devices, each violation of this article, including the terms of a permit, is a misdemeanor punishable by a maximum fine of \$500.00.
- (e) *Available remedies.* This article and the provisions of permits issued under this article may be enforced by an appropriate equitable remedy, including abatement orders and mandatory or prohibitory injunctions, issuing from a court of competent jurisdiction. The general court of justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the city for equitable relief that there is an adequate remedy at law. In applying this section, the city council intends that revocation of a permit be deemed to be a remedy among other authorized remedies.

**Section 3.** All ordinances or portions of ordinances in conflict herewith are hereby repealed.

**Section 4.** Should any provision of this ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of the ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

**Section 5.** This ordinance shall take effect and be in force from and after the date of its adoption.



Adopted this the \_\_\_\_ day of \_\_\_\_\_, 2020.

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Walker E. Reid, III, Mayor

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Suzanne J. Gibbs, City Clerk

EXAMPLE-GASTONIA

## **PILOT OPERATING AGREEMENT**

This Pilot Operating Agreement (the “Agreement”) is entered into by and between Bird Rides, Inc., a California corporation, located at 406 Broadway #369 Santa Monica, CA 90401 (the “Company”), and CITY OF GASTONIA, a North Carolina Municipal Corporation (the “City”) located at 181 S. South Street, Gastonia, North Carolina 28052 (the “City”) as of October 20, 2020.

### **1. Statement and Purpose**

The purpose of this Agreement is to establish interim rules and regulations governing the pilot operation of a Stand-up electric scooter sharing system within the City while this Agreement is in effect (the “Pilot”), and to ensure that the Pilot is consistent with the safety and well-being of bicyclists, pedestrians, and other users of the public rights-of-way.

### **2. Scope**

This Agreement and its terms apply to any proposed deployment of Stand-up electric scooter sharing systems within City’s jurisdictional boundaries. No person shall deploy a Stand-up electric scooter sharing system in the City in violation of this Agreement. This Agreement and the Pilot shall remain in effect for a period of twelve months and shall automatically renew for successive twelve month periods unless either party provides written notice to the other of its intention not to renew at least thirty (30) days prior to the end of the then-current term.

The City reserves the right to terminate this Agreement for convenience on ninety (90) days written notice.

### **3. Procedures**

While this Agreement is in effect, Company shall be the sole provider of Stand-up electric scooter sharing systems within City’s jurisdictional boundaries for the Pilot, contingent upon compliance with the terms of this Agreement. Upon effectiveness of this Agreement, Company shall provide an affidavit of compliance with the terms of this Agreement and provide appropriate indemnification.

### **4. Operating Regulations**

- a. Company, and/or its service providers, agents or assigns, shall be responsible for operating a Stand-up electric scooter program in the City with the below requirements.
- b. Stand-up electric scooters shall mean a device weighing less than 150 pounds, that has: (i) has handlebars and an electric motor; (ii) is solely powered by the electric motor and/or human power; and (iii) has a maximum speed of no more than 20 mph on a paved level surface when powered solely by the electric motor.
- c. While this Agreement and Pilot are in effect, the Company shall pay the City a revenue-share of \$0.05 per ride to help fund protected transportation improvements within the pilot areas. The

Company shall pay the revenue-share to the City on a quarterly basis, in arrears within 30 days from the end of the preceding month.

- d. Except as otherwise provided herein, City shall regulate the operation of Stand-up electric scooters in a manner no more restrictive than City's regulation of bicycles.
- e. Stand-up electric scooters are to be ridden on streets, and where available, in bike lanes and bike paths. Stand-up electric scooters are to stay to the right of street lanes and to offer the right of way to bicycles in bike lanes and on bike paths. Users of Stand-up electric scooters shall be 18 or older. Users of Stand-up electric scooters who violate these provisions may be fined by City consistent with fines for cyclists.
- f. Company shall provide easily visible contact information, including toll-free phone number and/or e-mail address on each Stand-up electric scooter for members of the public to make relocation requests or to report other issues with devices.
- g. Hours of operation when the Company's Stand-up electric scooters will be made available to rent for residents are 4 a.m. to 1:00 am (local time).
- h. Company shall provide a minimum of 50 vehicles at launch.
- i. When at cap, Company is permitted to increase its fleet size on a monthly basis in the event that the Company's fleet provides on average of more than two rides per Stand-up electric scooter per day within that Zone. City may request data from Company on a monthly basis to determine and demonstrate the utilization rate of vehicles in Company's fleet, pursuant to Section 7.

## 5. Parking

- a. Users of Stand-up electric scooters shall park devices upright in the furniture zone of the sidewalk, beside a bicycle rack or in another area specifically designated for bicycle parking, or on the street next to an unmarked curb.
- b. Users shall not park Stand-up electric scooters in such a manner as to block: the pedestrian clear zone area of the sidewalk; any fire hydrant, call box, or other emergency facility; bus bench; or utility pole or box.
- c. Users shall not park Stand-up electric scooters in such a manner as to impede or interfere with the reasonable use of any commercial window display or access to or from any building.
- d. Users shall not park Stand-up electric scooters in such a manner as to impede or interfere with the reasonable use of any bicycle rack or news rack.
- e. Users may park Stand-up electric scooters in on-street parking spaces in the following circumstances:
  - i. When marked parking spaces are officially designated stations for such devices in business districts;
  - ii. In neighborhoods with rolled curbs, or with inadequate sidewalk space; or
  - iii. In marked parking spaces designated for motorcycles.
- f. Users may park Stand-up electric scooters on blocks without sidewalks only if the travel lane(s) and 6-foot pedestrian clear zone are not impeded.
- g. Users shall not park Stand-up electric scooters in the landscape/furniture zone directly adjacent to or within the following areas, such that access is impeded:

- i. Transit zones, including bus stops, shelters, passenger waiting areas and bus layover and staging zones, except at existing bicycle racks;
  - ii. Loading zones;
  - iii. Disabled parking zone;
  - iv. Street furniture that requires pedestrian access (e.g., benches, parking pay stations, bus shelters, transit information signs, etc.);
  - v. Curb ramps;
  - vi. Entryways; and
  - vii. Driveways.
- h. Users of Stand-up electric scooters who violate these provisions may be fined by City consistent with fines for cyclists.
  - i. Company may stage its Stand-up electric scooters in permitted parking areas as described in this section. To the extent Company desires to stage Stand-up electric scooters in areas other than the public right-of-way, Company must first obtain the right to do so from the appropriate City department, property owner, or public agency.
  - j. Company and the City will develop appropriate parking solutions/signage based on rider utilization and end-ride data to ensure any parking designators are located in usable and beneficial locations. As part of this agreement, the company agrees to provide at least three parking stickers in the pilot area at a cost no greater than \$500.

## 6. Operations

- a. Company shall maintain 24-hour customer service for customers to report safety concerns, complaints, or to ask questions. Company shall maintain a multilingual website, call center, and/or mobile app customer interface that is available twenty-four hours a day, seven days a week. The aforementioned shall be compliant with the Americans with Disabilities Act.
- b. In the event a safety or maintenance issue is reported for a specific device, that Stand-up electric scooter shall be made unavailable to users and shall be removed within the timeframes provided herein. Any inoperable or unsafe device shall be repaired before it is put back into service.
- c. Company shall respond to reports of incorrectly parked Stand-up electric scooters, Stand-up electric scooters continuously parked in one location for more than 72 hours, or unsafe/inoperable Stand-up electric scooters, by relocating, re-parking, or removing the Stand-up electric scooters, as appropriate, within 24 hours of receiving notice that must include the location of the Stand-up electric scooter.
- d. Company shall provide notice to all users that:
  - i. Stand-up electric scooters are to be ridden on streets, and where available, in bike lanes and bike paths;
  - ii. Stand-up electric scooters are to stay to the right of street lanes and to offer the right of way to bicycles on bike lanes and bike paths;
  - iii. Helmets are encouraged for all users;
  - iv. Parking must be done in the designated areas; and



- v. Riding responsibly is encouraged and riders who misuse the service can be fined and/or removed.
- e. Stand-up electric scooter riders are required to take a photo whenever they park their scooter at the end of a ride.
- f. Company shall provide education to Stand-up electric scooter riders on the City's existing rules and regulations, safe and courteous riding, and proper parking.
- g. Company will provide the City with a promotional scooter and charger with unlimited use at no cost to the City for the term of the agreement. The City intends to use the promotional scooter for special events and educational purposes.

## 7. Data Sharing

City may require Company to provide anonymized fleet and ride activity data for all trips starting or ending within the jurisdiction of City on any vehicle of Licensee or of any person or company controlled by, controlling, or under common control with Licensee, provided that, to ensure individual privacy:

- a. such data is provided via an application programming interface, subject to Company's license agreement for such interface, in compliance with a national data format specification such as the Mobility Data Specification;
- b. any such data provided shall be treated as trade secret and proprietary business information, shall not be shared to third parties without Company's consent, and shall not be treated as owned by the local authority; and
- c. such data shall be considered personally identifiable information, and shall under no circumstances be disclosed pursuant to public records requests received by the local authority without prior aggregation or obfuscation to protect individual privacy.

## 8. Indemnification

Company agrees to indemnify, defend and hold harmless City (and City's employees, agents and affiliates) from and against all actions, damages or claims brought against City arising out of Company's negligence or willful misconduct, except that Company's indemnification obligation shall not extend to claims of City's (or City's employees', agents' or affiliates') negligence or willful misconduct. City expressly acknowledges that in no event shall Company be liable for any special, indirect, consequential or punitive damages. Company's indemnification obligations shall survive for a period of three (3) year after expiration of this Agreement. Company shall be released from its indemnification obligations under this section if the loss or damage was caused by the City's negligent construction or maintenance of public infrastructure. City's right to indemnification shall be contingent on City notifying Company promptly following receipt or notice of any claim; Company shall have sole control of any defense; and, City shall not consent to the entry of a judgment or enter into any settlement without the prior written consent of Company.

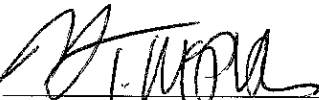
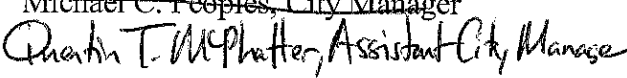
9. Insurance

Company shall provide City with proof of insurance coverage exclusively for the operation of Stand-up electric scooters including: (a) Commercial General Liability insurance coverage with a limit of no less than \$1,000,000.00 each occurrence and \$2,000,000.00 aggregate; (b) Automobile Insurance coverage with a limit of no less than \$1,000,000.00 each occurrence and \$1,000,000.00 aggregate; (c) Umbrella or Excess Liability coverage with a limit of no less than \$5,000,000.00 each occurrence/aggregate; and (d) where Company employs persons within the City, Workers' Compensation coverage of no less than the statutory requirement. Company shall name the City of Gastonia as additional insured on the General Liability insurance and the Umbrella or Excess Liability coverage. Company shall notify the City at least 30 days in advance of changes/cancellations to the insurance policies above.

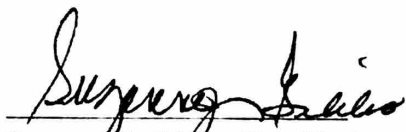
10. Exclusivity

- a. In furtherance of City's goals of ensuring pedestrian and scooter safety, reducing sidewalk clutter, and maintaining pedestrian rights-of-way, and in recognition of Company's safety record, resources, and experience in providing shared mobility services, Company shall be designated as the exclusive operator of Stand-up electric scooter sharing systems within City's jurisdictional boundaries, so long as this agreement is in effect and Company complies with all federal, state, and City laws. While this agreement is in effect, City agrees not to enter into any agreement with any other person to provide shared Stand-up electric scooters within City's jurisdictional boundaries.
- b. This designation may not be assigned or transferred to any other party.
- c. This section shall not apply to the private sale or rental of Stand-up electric scooters, provided that such scooters are not placed in the public right-of-way for shared public use.
- d. No exclusivity is imputed or implied as to the market for shared mobility services generally, and this agreement and designation shall not apply to the operation of any shared mobility service with any vehicle other than Stand-up electric scooters.

CITY OF GASTONIA

BY:   
Michael C. Peoples, City Manager  
  
Quentin T. McPhatter, Assistant City Manager

ATTEST:

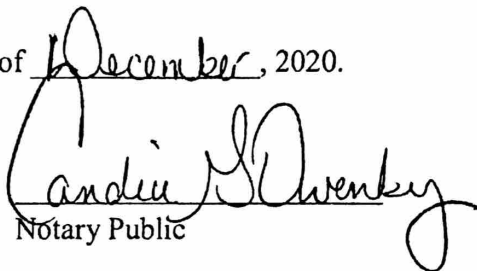
  
Suzanne J. Gibbs, City Clerk



STATE OF NORTH CAROLINA  
COUNTY OF GASTON

I, Candice G Owenby, a Notary Public of the aforesaid County and State, do hereby certify that Suzanne J. Gibbs, personally appeared before me this day and acknowledged that she is the City Clerk of the City of Gastonia and that by authority duly given and as the act of the municipal corporation, the foregoing instrument was signed in its name by its Manager sealed with its corporate seal and attested by her as its City Clerk.

WITNESS my hand and Notarial Seal, this the 10 day of December, 2020.

  
Notary Public



My Commission Expires:

BIRD  
a California corporation

By: 

Its: Officer

STATE OF CALIFORNIA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public, certify that \_\_\_\_\_, personally appeared before me this day and acknowledged that he/she is an Officer of Bird, Inc., a corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by him/her.

WITNESS my hand and Notarial Seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. **Please see attached Notary form**

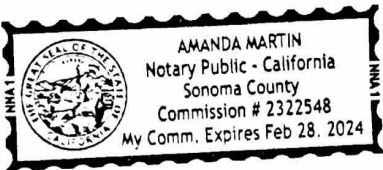
CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }  
County of Sonoma  
On Dec. 10, 2020 before me, Amanda Martin, Notary Public  
Date Here Insert Name and Title of the Officer  
personally appeared Austin Tate Marshburn  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Amanda Martin  
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: \_\_\_\_\_  
Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_  
Signer(s) Other Than Named Above: \_\_\_\_\_

Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_ Signer's Name: \_\_\_\_\_  
☐ Corporate Officer – Title(s): \_\_\_\_\_ ☐ Corporate Officer – Title(s): \_\_\_\_\_  
☐ Partner – ☐ Limited ☐ General ☐ Partner – ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact ☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator ☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_ ☐ Other: \_\_\_\_\_  
Signer is Representing: \_\_\_\_\_ Signer is Representing: \_\_\_\_\_



Notary Public

My Commission Expires: \_\_\_\_\_



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

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<b>SUBMITTER:</b>	John Connet	<b>MEETING DATE:</b> 03/04/2021
<b>AGENDA SECTION:</b>	City Council Action	<b>DEPARTMENT:</b> Administration
<b>TITLE OF ITEM, Presenter Name, Title:</b>	Action by Hendersonville City Council to Cease Negotiations for a Hotel on the Dogwood Parking Lot – <i>John Connet, City Manager</i>	
<b><u>SUGGESTED MOTION(S):</u></b>	I move that the City Council direct staff to cease negotiations for the development of a hotel on the Dogwood Parking Lot.	

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### SUMMARY:

The City entered into a Memorandum of Understanding with Blue Star Hospitality LLC to develop a hotel on the Dogwood Parking Lot. The Memorandum of Understanding (MOU) expired on March 1, 2020 and the developer did not submit a written request to extend the MOU for 120 days. In addition, the City Council has approved two additional downtown hotel plans by other developers and has stated you no longer wish to pursue a hotel on the Dogwood Parking Lot. Therefore, I ask that City Council to take formal action to direct staff to cease negotiations for the development of a hotel on the Dogwood Parking Lot.

**BUDGET IMPACT:**     \$

**Is this expenditure approved in the current fiscal year budget?** YES / NO

**If no, describe how it will be funded.**

**PROJECT NUMBER:** N/A

**PETITION NUMBER:** N/A

**ADDITIONAL PETITION NUMBER:** N/A

**PETITIONER NAME:** N/A

**ATTACHMENTS:**

Memorandum of Understanding

**Memorandum of Understanding between the City of Hendersonville and Blue Star Hospitality, LLC**  
*April 4th, 2019*

**This Memorandum of Understanding** (“MOU”) is effective as of the 4th day of April, 2019 (the “Effective Date”), by and between the City of Hendersonville, NC (“City”) and Blue Star Hospitality, LLC, a North Carolina limited liability company (“Developer”) (City and Developer together the “Parties”, each a “Party”), for the development of the “Project” as further described below in response to the City’s Solicitation for Development Opportunity for the Dogwood Parking Lot, which is incorporated herein by reference.

1. Purpose. It is agreed by both Parties that the purpose of this MOU is to set forth an outline of the material issues regarding the proposed development and operation of the Project. This MOU is expressly conditioned upon and subject to the parties hereto finalizing and entering into a mutually satisfactory and definitive written agreement as to all aspects of the proposed transaction. Except for Paragraph 12 pertaining to Surety, this MOU shall only establish the intent of each of the parties to (i) proceed with the development of the Project and (ii) negotiate diligently, reasonably, and in good faith a definitive written agreement between the Developer and City regarding development of the Project, in the form of a Development Agreement (“DA”) or other development services agreement, including the business terms and conditions contained herein, or as otherwise agreed by the Parties. The Parties intend for Paragraph 12, Surety, Paragraph 4, Development Plan, and the first sentence of Paragraph 6, Timing, and first two sentences of Paragraph 7, Designation of Exclusive Rights of this MOU to establish contractually binding obligations, the consideration for which is their mutuality. This MOU is intended to reflect the current understanding of the Parties, and all Parties agree that time is of the essence. Furthermore, the City is entering this MOU for the sole purpose of exercising its development powers granted by statute under North Carolina law, including, but not limited to, N.C.G.S. § 160A-458.3, § 158-7.1, and Part 3D of Article 19 of N.C.G.S. Chapter 160A, for the purpose of undertaking downtown City development projects, constructing public infrastructure, and improving the economic development of the community. The Parties acknowledge and agree that the Project terms described in this MOU are preliminary statements of intent of the Parties and are subject to any and all necessary City approval procedures, and definitive documents setting forth the complete agreement and understanding of the Parties in form and content satisfactory to the City and Developer.
2. Project Description. The City desires to redevelop the Dogwood Parking Lot site as a downtown hotel and event space (“Project”) that will function as an economic catalyst for the Main Street and Historic Seventh Avenue Municipal Service Districts (“MSDs”). As part of this commitment, the City has sought an experienced development partner to execute this redevelopment project on 1.47 acres of prime redevelopment land in the center of the City. The City developed a set of public interests expected to guide the basic vision and expected outcome of a successful Project. According to these principles, the Project should:

- Maximize public benefit and minimize public investment
- Contribute to vitality, culture and economy of City (e.g. event space)
- Respect existing City fabric (height limits, historic buildings, design aesthetics, etc.)
- Provide integration with Main Street
- Provide adequate parking resources

The Developer shall attempt in good faith to accomplish these principles with the Development Plan.

The Project will include the construction of a hotel on the existing Dogwood Parking Lot site which will include event space and sufficient parking to meet the requirements of the City of Hendersonville Zoning Ordinance. Infrastructure improvements including streets, sidewalks and landscaping will be necessary to service the Project.

3. Site. The designated area for the Project represents approximately 1.47 acres of land owned by the City of Hendersonville along Church Street between 5<sup>th</sup> Avenue West and 4<sup>th</sup> Avenue West (as defined in Exhibit A).
4. Development Plan. By December 1<sup>st</sup>, 2019 the Developer will provide the City with drafts of an updated development plan ("Development Plan") which is generally consistent with the description of the City's vision and objectives for the Site as presented in the Solicitation for Development Program. The City will facilitate community and stakeholder interests with the Developer and, in the drafting of the Development Plan, the Developer will make a good faith effort to address the community's interests.
5. Infrastructure: It is understood that streetscape improvements will need to be made to connect the Site to Main Street in order to service the Project. Specific plans for the financing and construction of all infrastructure including but not limited to streets, sidewalks, curbing, public space, water, sewer, and additional utilities including expectation for City participation will be incorporated within the Development Agreement.
6. Timing. The Developer shall have until March 1<sup>st</sup>, 2020 to diligently, reasonably and in good faith negotiate and attempt to finalize a Development Agreement or DA with the City and otherwise pursue the development of the Project, including site investigations and securing entitlements and financing commitments.
  - a. City Termination Clause. City will have the right to terminate the MOU at any time if Developer has committed a Breach of this MOU. If City elects to terminate the MOU prior to the end of the Evaluation Period, then Paragraph 12, Surety of this MOU shall have no effect and the Surety Amount shall be returned to Developer.
  - b. Developer Termination Clause. Developer will have the right to terminate the MOU at any time if City has committed a Breach of this MOU, except for Paragraph 12 Surety of this MOU, the terms of which will survive any termination of this MOU.
  - c. Extension. This MOU may be extended for up to one-hundred and twenty (120) days upon the written request of Developer with City approval not to be



unreasonably withheld. Any further extensions on the request of Developer may be granted or withheld by City in its sole and absolute discretion, as set forth in a written notice from City to Developer, provided prior to the expiration of the then current term.

7. Designation of Exclusive Rights. City agrees that, until this MOU is terminated, it will negotiate in good faith with Developer and with no other prospective developer. Developer agrees to negotiate in good faith with the City. If the Parties have not executed the DA by the expiration of the Evaluation Period, this MOU and any other agreements between the Parties regarding the Project will terminate.
  - a. Insurance. It is not anticipated that Developer will engage in any construction, demolition or site work during the Evaluation Period of this MOU and therefore no insurance will be required during the Evaluation Period. However, the Developer shall obtain and maintain (at its sole expense), or cause to be maintained, at all times, adequate insurance with respect to the construction and development of the Project.
  - b. Transfer of Rights. Developer shall not Transfer all or any portion of its interest in, title to, or rights or obligations under this MOU without the City's prior written consent.
8. Obligations of Parties.
  - a. City is responsible for cooperating with Developer in the performance of its obligations hereunder. Included in these obligations is the development of preliminary plans and specifications for pedestrian and landscaping improvements between the project site and Main Street. The final scope of work for pedestrian and landscaping improvements will be negotiated as part of the DA. The Hendersonville City Manager shall serve as the designated liaison for communications pertaining to this MOU. The City will provide the Developer with a final copy of an environmental assessment (phase I) report, boundary survey report, and geotechnical report.
  - b. Developer is responsible for coordinating all work and services required by this MOU, with cooperation of City and its agencies. Developer shall provide a final copy of the feasibility report to the City in place of any surety payment. Developer shall designate a liaison who shall be the primary point of contact for communications pertaining to this MOU. Until further notice, such designated liaison on behalf of Developer is Satis Patel on behalf of Blue Star Hospitality, LLC, and such other persons as he may designate from time to time in a written notice to City.
9. Undertakings during the Evaluation Period. The Parties agree that certain actions must be taken by one or both of the Parties hereto during the Evaluation Period of the MOU, including the evaluation of the Property and built environment, analysis of City development requirements, and opportunities for collaboration and potential funding resources. In general, each party will take such steps as are reasonably necessary to create a DA. Developer acknowledges that the City has architectural review rights and the design and architecture of the Project shall be subject to City approval (which approval shall not be

unreasonably withheld). The Evaluation Period shall begin on the date of execution of this document and end upon the execution of the formal DA or 12:00 noon on March 1<sup>st</sup>, 2020, whichever occurs first.

10. Development Agreement. It is agreed by both Parties that the DA will cover task areas such as but not limited to: (a) site investigation and analysis of existing conditions, (b) building evaluation, (c) site and infrastructure planning, (d) land use programming and completion of a redevelopment plan in concert with the City's vision, (e) plan for re-platting of Property boundaries, if necessary, (f) financing, including both public and private sources, (g) agreement on terms for purchase and transfer of property and (h) a development budget that shall include detailed Sources and Uses (with uses segregated by public improvements and private improvements), Operating Expenses and Income, and specific budgeted costs for legal, financing, closing, cost of labor, equipment, supplies, materials, transportation, services, travel, insurance, taxes, permit fees, developer's general overhead and all other costs of development. The DA will more fully delineate the steps and responsibilities required to execute the Development Plan. Specific goals related to the drafting of a DA are outlined in Exhibit B: Development Agreement Timeline.
11. Land Purchase. Parties agree to explore the most advantageous methods of ownership, recognizing that both parties have certain objectives and needs to achieve. The City may condition the Purchase effective to the Developer upon closing on financing for the construction of the Project, or, if required by lender, sooner, with a recapture right in the event Developer does not complete the Project. The City is presenting the Property "as is". Both Parties acknowledge that certain environmental risks may exist in regards to development of the site. The advertised land acquisition cost is \$1,098,000. The recapture right will be further defined in the DA and will be subject to other liens on the Property including but not limited to lenders and investors.
12. Cooperation and Information Exchange. Both parties agree to meet regularly and no less than monthly (which may be implemented by conference calls among all participants) to advise each regarding progress on any one or more of the undertakings required during the Evaluation Period. Developer agrees to share with City such information as may be developed regarding financing, marketing, land-use issues, design questions and construction of the Project. City shall provide copies of all reports, design studies, as-builts, traffic studies, environmental assessments, building evaluations and engineering reports, geotechnical assessments, ownership and property tax information and similar materials in its possession pertaining to the Project.
13. Expenses. Each party will be responsible for its own expenses incurred in connection with the performance of any obligations required by this MOU. Except as otherwise provided herein, during the term of this MOU no party will be responsible for the expenses of any other party.
14. Confidentiality. Each party agrees to maintain in confidence information regarding the Project received by that party that is not otherwise publicly available, subject to disclosure required by any applicable law or regulation or mandates of any court. Such information

may be shared with members of each party's advisory team, including lawyers, accountants, lenders, investors and other consultants. City acknowledges that Developer may be providing preliminary or incomplete reports and studies as part of its undertakings hereunder, and that Developer does not assume any responsibilities for the accuracy of such information. However, Developer agrees that to the extent that it has information contained in reports, studies and such similar undertakings, it will furnish to City the complete information that is held by Developer. The Parties acknowledge that the information relating to the Project is subject to disclosure under the N.C. Public Records Act, Chapter 132 of the North Carolina General Statutes, except any such information that the City is not required or authorized to disclose pursuant to N.C.G.S. § 132-1.2. It is understood, however, that nothing in this MOU shall preclude either party from discussing the substance or any relevant details of the transaction described in this MOU with any of its attorneys, accountants, professional consultants or potential lenders, as the case may be, or prevent the holding of public City Board meetings in compliance with applicable laws.

15. Publicity Coordination. Each Party agrees to coordinate any public statements with the other party. Neither Party shall issue any written press release, advertisement or other formal communication (individually and collectively) to any media outlet (including, but not limited to, newspapers, radio and television stations and websites) relating to the Project, unless it has received the agreement by the other Party to such release. Unless otherwise required by law or court mandate, all press releases and public announcements regarding the Project will be made by mutual consent. Notwithstanding the foregoing, the Parties may make known its selection hereunder where it deems necessary or appropriate and may re-distribute any previously issued news reports, press releases or other publicly available information about the Project.
16. Representations. Each party represents to the other parties that it has all necessary authority to enter into this MOU, to execute and deliver this MOU to the other parties, and to perform its obligations hereunder.
17. Notices. All notices, requests, demands or other communications required or permitted to be given hereunder shall be in writing and shall be addressed and delivered by hand or by certified mail, return receipt requested, or by overnight courier, or by fax, with evidence of delivery, to each party at the addresses set forth below. Any such notice, request, demand or other communication shall be considered given or delivered, as the case may be, on the date of delivery. Rejection or other refusal to accept or inability to deliver because of changed address of which proper notice was not given shall be deemed to be receipt of the notice, request, demand, or other communication. By giving prior written notice thereof, any party, from time to time, may change its address for notices hereunder.

a. City of Hendersonville: 145 5<sup>th</sup> Avenue East  
Hendersonville, NC 28792  
Attn: John Connet

b. Blue Star Hospitality, LLC: P.O. Box 759  
Fletcher, NC 28732

Attn: Satis Patel

18. Force Majeure. A party shall not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay (i) is beyond the reasonable control of that party, (ii) materially affects the performance of any of its obligations under this agreement, and (iii) could not reasonably have been foreseen or provided against, but does not include general economic or other conditions affecting financial markets generally.
19. Modifications. This MOU can only be modified in a writing signed by both Parties.
20. Counterparts. This MOU may be signed in counterparts; each counterpart shall be considered an original.
21. No Partnership. Nothing contained in this MOU shall be deemed or construed to create a partnership or joint venture between City and Developer, or to cause City or Developer to be responsible in any way for the debts or obligations of each other.



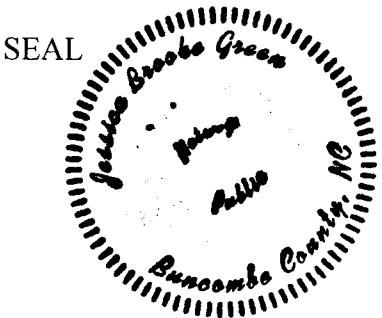
BLUE STAR HOSPITALITY, LLC

By: [Signature] (SEAL)  
Satis Patel, Managing Member

State of North Carolina  
County of Henderson

I, Jessica Brooke Green, a Notary Public of County and State aforesaid, certify that Satis Patel, a Managing Member of Blue Star Hospitality, LLC, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 24<sup>th</sup> day of April, 2019.

Jessica Brooke Green Notary Public  
My commission expires:



CITY OF HENDERSONVILLE

By: Barbara Volk  
Barbara Volk, Mayor

Attest: Tammie K. Drake  
Tammie K. Drake, MMC, Hendersonville City Clerk

State of North Carolina  
County of Henderson

I, Samuel H. Fritschner, a Notary Public of the County and State aforesaid, certify that Barbara Volk in her capacity as Mayor of the City of Hendersonville and Tammie K Drake, in her capacity as Hendersonville City Clerk, appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 12 day of April, 2019.

[Signature]  
Samuel H. Fritschner, Notary Public

SEAL

My commission expires: 3 August 2023

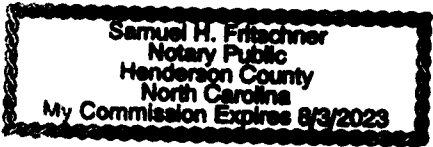


Exhibit A: Project Site

Tract 1:

PIN #9568783304: Being all of those tracts as found in Deed Book 556 at page 205 of the Henderson County Registry.

Tract 2:

PIN #9568784147: Being all of tract 1 and tract 2 as found in Deed Book 405 at page 209 of the Henderson County Registry.

Tract 3:

PIN #9568782188: Being all of that land described in Deed Book 405 at page 103 of the Henderson County Registry.

### Exhibit B: Development Agreement Timeline

This exhibit establishes the following goals and timeline for completion as it relates to pre-development work in the drafting of a Development Agreement (DA), as defined in Section 10 of this document:

By June 1<sup>st</sup>, 2019

- Feasibility Study conclusions with economic viability of the project's program
- Identify Hotel Brand options

By September 1<sup>st</sup>, 2019

- Preliminary City Council approval of hotel exterior design
- Design drawings submitted for cost estimates
- Final environmental, geotechnical, and boundary survey reports
- Initial report from Real Estate Consultant regarding the potential tenants
- Initial conclusions on parking breakdown for hotel and public parking spaces
- Initial conclusions on what improvements the City may provide to the project
- Study presented by the Real Estate Consultant on the viability of the project program

By December 1<sup>st</sup>, 2019

- Detailed cost estimate provided by the contractor
- City cost estimates and design for any public infrastructure improvements
- Study presented on the viability of the parking space allocation and final agreement on parking space management and allocations
- Identify all legal documents needed for closing
- Update on lender and investor commitments

By March 1<sup>st</sup>, 2020

- Building concept design finalization
- Updated cost estimates
- Final agreements for City provided improvements
- Final report from Real Estate Consultant
- Final legal documents for closing
- Final evidence of lender and investor commitments for project



CITY OF HENDERSONVILLE

AGENDA ITEM SUMMARY

SUBMITTER:

Drew Finley

MEETING DATE:

March 4, 2021

AGENDA SECTION:

NEW BUSINESS

DEPARTMENT:

Water & Sewer

TITLE OF ITEM,  
Presenter Name, Title:

Briefing on Permitting for Duke Energy Coal Ash Contact Water – *Gracie Erwin, Environmental Compliance Coordinator, & Drew Finley, Lead for NC Fellow*

SUGGESTED MOTION(S):

N/A

SUMMARY:

Staff will provide a brief update to City Council regarding Duke Energy’s permit for coal ash leachate disposal at the City’s Wastewater Treatment Plant.

BUDGET IMPACT: N/A

Is this expenditure approved in the current fiscal year budget? N/A

If no, describe how it will be funded.

PROJECT NUMBER:

N/A

PETITION NUMBER:

N/A

ADDITIONAL PETITION NUMBER: N/A

PETITIONER NAME: N/A

ATTACHMENTS:

City Council Briefing of Permitting for Duke Energy Coal Ash Contact Water



City Council Briefing of Permitting for Duke Energy Coal Ash Contact Water

Duke Energy is in the process of constructing a landfill to hold the remaining coal ash from their old coal plant in Arden. The Metropolitan Sewerage District of Buncombe County (MSD) has agreed to take any contact water through a force main tied into the MSD system. However, the State of North Carolina has required Duke Energy to have a contingency plan in place in the event MSD is unable to take all of the contact water. They have asked the City of Hendersonville to permit Duke Energy to dispose of contact water at our Wastewater Treatment Plant (WWTP) for any excess leachate of the limit set by MSD (200,000 gallons per day). The amount Duke Energy anticipates to dispose of through a pump and haul process to our WWTP is slim to none; however this is a requirement from the North Carolina Department of Environmental Quality. Our Utilities Director, Operator in Responsible Charge (ORC) of the WWTP, the WWTP Lab Supervisor, and the Environmental Compliance Coordinator have all reviewed contaminate analysis of the contact water and do not foresee any issues with our WWTP being able to effectively treat the water while maintaining our day-to-day processes. The WWTP has agreed to provide treatment services for anything MSD is unable to take (i.e. excess of 200,000 gpd). Since this would be a pump and haul process, we will charge our standard septage treatment rate of \$60/1000 gallons. The duration of this contingency plan would be during the filling of the coal ash landfill, which is anticipated to be complete in one year's time. Duke has asked to issue a permit with Hendersonville, to be in affect from the present until August 2022. A 500,000 gallon purchase order has been created to serve as a backup for their primary disposal method.

MSD has issued Duke Energy a groundwater remediation permit set to expire in 2025. MSD has said they will accept up to 250,000 gpd, but anticipates actual flow will be much lower.



CITY OF HENDERSONVILLE

AGENDA ITEM SUMMARY

SUBMITTER:

John Buchanan

MEETING DATE:

3/4/2021

AGENDA SECTION:

Presentation Only

DEPARTMENT:

Finance

TITLE OF ITEM,

Fiscal Year 2021 2<sup>nd</sup> Quarter Cash and Investment Report

Presenter Name, Title: John Buchanan, Finance Director

**SUGGESTED MOTION(S):** None

SUMMARY:

Cash and Investment Summary:

As of December 31, 2020 the City's cash and investments consists of the following:

U.S. Treasuries	\$	1,614,928.13
Federal Agency	\$	1,999,500.00
Municipal & NC	\$	784,793.10
Commercial Paper	\$	1,997,387.77
NCCMT( FCB Cash)	\$	3,764,302.49
Central Depository:	\$	4,938,207.07
Health&Welfare Acct:	\$	37,804.88
NCCMT Cash Funds	\$	1,085,810.79
Suntrust (Rev. Bond)	\$	3,083,280.14
<u>Hometrust (PD Const)</u>	<u>\$</u>	<u>6,823,439.03</u>

Total	\$	26,129,453.40
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Investment rate of return remains very low. Current Treasury yield on a 3 year maturity is 22 basis points. Real and business/personal property tax collections are at 97% collected for the current year.

**BUDGET IMPACT:**

\$

Is this expenditure approved in the current fiscal year budget? YES / NO

If no, describe how it will be funded.

EnterTextHere

**PROJECT NUMBER:** N/A

**PETITION NUMBER:** N/A

**ADDITIONAL PETITION NUMBER:** N/A

**PETITIONER NAME:** N/A

**ATTACHMENTS:**

EnterTextHere

CITY OF HENDERSONVILLE  
FIRST CITIZENS CUSTODIAN ACCOUNT

## INVESTMENT REPORT

January 21

Investment Name		Rating	Cusip	Price	Coupon	YTM	Purchased Date	Issued Date	Maturity Date	Callable	Cost Basis
<b>TREASURY AND FEDERAL AGENCIES</b>											
US Treasury Note	USTN		912828M80	101.05	2.00%	1.64%	12/11/2019	11/30/2015	11/30/2022	NO	606,328.13
US Treasury Note	USTN		912828S27	100.86	1.13%	0.10%	8/28/2020	6/30/2016	6/30/2021		1,008,600.00
Federal Farm Credit	FFCB	Aaa AA+	3133EL7EB	99.975	0.22%	0.23%	9/29/2020	9/15/2020	3/15/2023		1,999,500.00
<b>TOTAL TREASURY AND FEDERAL AGENCIES</b>											<b>3,614,428.13</b>
<b>COMMERCIAL PAPER/CASH EQUIVALENT</b>											
Toyota Motor Corp	TMC	A1+/P1	89233GSU1	99.8064	0.26%	0.26%	9/1/2020	9/1/2020	5/28/2021		998,064.44
Exxon Corp Disc Comm Paper	ECDC	A1+/P1	30229ARS0	99.93233	0.14%	0.14%	11/2/2020	11/2/2020	4/26/2021		999,323.33
<b>TOTAL COMMERCIAL PAPER/ CASH EQUIVALENT</b>											<b>1,997,387.77</b>
<b>OTHER INVESTMENTS (MUNI/BABS/)</b>											
Gaston County	GCNC	Aaa AAA	367298XL5	118.014	5.00%	1.05%	5/24/2016	5/24/2016	2/1/2021	No	784,793.10
<b>TOTAL OTHER INVESTMENTS (MUNI/BABS)</b>											<b>784,793.10</b>
<b>Total Securities</b>											<b>6,396,609.00</b>
NC Capt Management	Cash										3,764,302.49
<b>Total Security - Cost Basis</b>											<b>10,160,911.49</b>

## Portfolio Allocation - by Security Type

<b>DIRECT GOVERNMENT SECURITIES</b>	TRES	\$	-
Fannie Mae	FNMA		-
Federal Home Loan bank	FHLB		-
Freddie Mac	FHLMC		-
Federal Farm Credit Bank	FFCB	\$	1,999,500.00
US Treasury Note	USTN		1,008,600.00
US Treasury Note	USTN		606,328.13
<b>Total GOVERNMENT AGENCIES</b>		\$	<b>3,614,428.13</b>
Commercial Paper	JPMC		1,997,387.77
<b>MUNI/OTHER</b>			<b>784,793.10</b>
		\$	<b>6,396,609.00</b>

## Portfolio Allocation - by Maturity Date:

2018	-
2019	-
2020	-
2021	\$ 3,790,780.87
2022	\$ 606,328.13
2023	\$ 1,999,500.00
	<b>\$6,396,609.00</b>