



CITY OF HENDERSONVILLE CITY COUNCIL REGULAR MEETING

Operations Center - Assembly Room | 305 Williams St. | Hendersonville NC 28792
Thursday, May 05, 2022 – 5:45 PM

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 L. Reece, City Clerk*
 - B. Revision of the Inclement Weather Policy – *Jennifer Harrell, HR Director*
 - C. Revision of the Travel Policy – *Jennifer Harrell, HR Director*
 - D. Special Event: Hendersonville's 175th Birthday Party- *Lew Holloway, Community Development Director*
 - E. Special Event: July Fourth Festival and Fireworks - *Lew Holloway, Community Development Director*
 - F. May 2022 Budget Amendments – *Adam Murr, Budget Manager*
 - G. May 2022 Grant Project Ordinances – *Adam Murr, Budget Manager*
 - H. Final Acceptance of Negotiated Offer to Purchase Lot 15, Overlook Subdivision, Plat Cabinet B, Slide 375A – *Daniel Heyman, Staff Attorney*
 - I. Utility Extension Agreement for the Heritage Park Subdivision – *Brendan Shanahan, Engineering*
 - J. Utility Extension Agreement for the Providence Walk Subdivision – *Brendan Shanahan, Engineering*
 - K. Selection of ADW's Proposal for Phase I of the City Hall and City Operations Facilities Renovations Project – *Drew Finley, Assistant Utilities Director*
 - L. Adoption Uniform Guidance Policies – *Angela Beeker, City Attorney*

- M. Resolution to Approve Interlocal Agreement for Ecusta Trail Construction Between S. Main and Kanuga Road - *John Connet, City Manager*

6. PRESENTATIONS

- A. Proclamation - Mental Health Awareness Month - *Mayor Barbara G. Volk*

- B. Quarterly MVP Recipients – *John Connet, City Manager*

7. PUBLIC HEARINGS

- A. Annexation: Public Hearing- 1448 and 1450 Old Spartanburg Road (C22-21-ANX) – *Tyler Morrow, Planner II*

- B. Zoning Text Amendment: Conditional Zoning District Rezoning Required Triggers (P22-25-ZTA) – *Lew Holloway; Community Development Director*

- C. Rezoning: Conditional Zoning District – Hawkins Pointe (P22-16-CZD) – *Matthew Manley, AICP – Planning Manager*

- D. Rezoning: Conditional Zoning District –White Pine Villas (P22-13-CZD) –*Tyler Morrow – Planner II*

- E. Rezoning: Conditional Zoning District – Southgate Apartments (P21-62-CZD) – *Matthew Manley, AICP – Planning Manager*

8. UNFINISHED BUSINESS

9. NEW BUSINESS

- A. Local Option Sales Tax Resolution – *John Connet, City Manager*

- B. Resolutions of Support for Apple Ridge, Hawkins Pointe and White Pine Villas Low Income Housing Tax Credit (LIHTC) Applications – *John Connet City Manager*

- C. City of Hendersonville, NC participation in the French Broad River Partnership – *Michael Huffman, Stormwater Administrator*

- D. Code of Ethics Complaint – *John Connet, City Manager*

10. CITY COUNCIL COMMENTS

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

12. 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, *MPA, CMC, NCCMC*, **MEETING DATE:** May 5, 2022
City Clerk

AGENDA SECTION: CONSENT **DEPARTMENT:** Administration

TITLE OF ITEM: Adoption of City Council Minutes – *Angela L. Reece, City Clerk*

SUGGESTED MOTION(S):

I move that City Council adopt the minutes of the March 23, 2022, Second Monthly Meeting, April 7, 2022 Regular Meeting, and April 21, 2022 Special Call Meeting.

SUMMARY:

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

- i. March 23, 2022, Second Monthly Meeting Minutes
- ii. April 7, 2022, Regular Session Minutes
- iii. April 21, 2022, Special Call Meeting Minutes

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

ATTACHMENTS:

- i. March 23, 2022, Second Monthly Meeting Minutes (DRAFT)
- ii. April 7, 2022, Regular Session Minutes (DRAFT)
- iii. April 21, 2022, Special Call Meeting Minutes (DRAFT)



MINUTES

March 23 2022

SECOND MONTHLY MEETING OF THE CITY COUNCIL CITY OPERATIONS CENTER | 305 WILLIAMS ST. | 4:00 p.m.

Present: Mayor Barbara G. Volk and Council Members: Mayor Pro Tem Lyndsey Simpson, Dr. Jennifer Hensley, Debbie O'Neal-Roundtree, and Jerry A. Smith Jr., J.D.

Staff Present: City Manager John F. Connet, 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 4:00 p.m. and welcomed those in attendance. A quorum was established with all members in attendance.

2. PRESENTATIONS

A. **Parking Fees and Permit Rates Presentation** – *Brian Pahle, Assistant City Manager*

Downtown Manager Jamie Carpenter provided a brief history of the parking deck project, reviewed the Walker Consultants project analysis and presented recommended parking rates and fees to Council. Ms. Carpenter encouraged the public to visit the City's website to view additional information on the project. Ms. Carpenter advised numerous advisory committees met and discussed four topics consisting of the need for downtown business employee permits, feasibility of monthly permit rate for downtown business employees, the need for space reservations, and daily and hourly rates. Assistant City Manager Brian Pahle discussed the following staff recommendations which encompassed feedback from the Economic Vitality Team subcommittee, Walker Consultants, and other downtown merchants.

Meter/Hourly Parking

\$2.00 per Hour; Main St. & Avenues First ½ Hour Free (3-Hour Max)

\$1.50 per Hour; Surface Lots & Deck First 1 Hour Free (5-Hour/ up to \$10.00 Max)

Monthly Permits

\$25 = Top Floor + Dogwood

\$60 = 24/7 Surface Lots (ex. Apple Lot)

\$80 = Deck Permit (any floor)

*No 24/7 Reserved Single Space (\$120 if implemented)

Enforcement: Mon. – Sat. 9am – 7pm

Council Member Jerry A. Smith Jr., J.D. provided a letter and petition submitted by Mark Pavao and local business owners in support of having the first half hour of parking available at no cost. Council Member Smith inquired regarding transfer of parking permits and staff stated the permit would be issued to the registration of the vehicle/owner.

Council Member Lyndsey Simpson expressed support for prepaid parking permits for Henderson County residents. Assistant Manager Brian Pahle stated if this is a Council priority then staff would recommend exploring the option through the Park Mobile Application to include the use of promotion codes. City Manager John Connet discussed the need to become more efficient while generating revenues to pay for the parking garage. He also discussed the need for enforcement technology to ensure the city has the tools necessary to enforce the first 30-minutes of free parking. Council Member Dr. Jennifer Hensley expressed concerns regarding abuse of the free time and Ms. Carpenter clarified that patrons would still be required to use the meter to park and said after the first 30 minutes it will begin charging. Ms. Carpenter further clarified that persons who do not use the meter would receive a

parking violation. Manager Connet stated the meter reading technology will also assist in other areas of town with enforcement. Council Member Debbie O'Neal-Roundtree stated she has spoken with many people who expressed concerns over implementation of parking fees. Council Member Jerry A. Smith Jr., J.D. clarified the parking lots one block off of Main Street will remain free. Council Member Lyndsey Simpson asked for consideration for further reducing downtown merchant employee parking fees and also asked staff to study lighting and safety in the free parking areas. Assistant Manager Brian Pahle stated charging sufficient rates will allow investment and improvements in other parking areas in town such as additional lighting and safety measures. He further clarified any Council approved rates would be included in the fee schedule which would be presented to Council for adoption mid-year.

After much consideration City Council agreed the first thirty minutes will be free on Main Street, the first hour will be free for the parking deck and surface lots. Council agreed to eliminate permanent reserved spots except those that are contractually obligated through the purchase of land through the new parking deck project. Council further agreed to direct staff to utilize the Park Mobile software to explore residential parking discounts.

B. ARP Funding Presentation – Administrative Staff

City Manager John Connet reminded everyone the City Council's vision is to use ARP dollars to fund eligible transformative projects that address difficult community needs and recalled Council's request to hear from the community before selection of specific projects to fund to assist with determining priorities. City Manager John Connet discussed the allowable uses for American Rescue Plan (ARP) funding and interim rule changes stating requests of the City must address one or more of the following: COVID-19 public health needs; used for investment in water and sewer infrastructure; or used to address negative economic impacts. Manager Connet discussed the timeline and reminded everyone funding must be appropriated by December 2024 and expended by December 2026.

City Manager John Connet discussed public outreach efforts through surveys, advertisements, newsletters, as well as participating in-person meetings and community group meetings during the early part of the year. Manager Connet stated there were 1,226 survey participants and discussed the top funding priorities identified such as addressing negative economic impacts related to COVID-19, investing in water and sewer infrastructure, and supporting public health expenditures related to COVID-19. Manager Connet provided the following recommendations according to the new interim rule to Council as follows:

Allocate \$2.5 million for:

- Salaries over two fiscal years (FY 22-23 and FY 23-24)
- High priority program/projects

Allocate \$2.0 million for 2-4 transformative community projects

- Economic Impacts (homelessness, food insecurity, affordable housing)
- Health Impacts (mental health and substance abuse) * limited authority
- Water and Sewer Infrastructure (focus on failing septic tanks; lead pipe replacement)

Budget Manager Adam Murr clarified the City has received 34 requests for funding by nonprofits during the initial process.

Council Member Dr. Jennifer Hensley recalled maps of failing septic systems and asked if there is a plan to meet the needs of the failed systems. City Manager John Connet said the largest area is on the south end of town but clarified many are on the parameter of the City and said topography is a challenge.

Council Member Jerry A. Smith Jr., J.D. inquired regarding requiring annexation for sewer service extension if the extension is funded by ARP funds. Attorney Angela Beeker clarified the two would not be related but said annexation would have to be voluntary according to statute and the City's extension policy.

After much discussion the consensus of City Council was to fund requests utilizing the three categories as identified by citizens and recommended by City Manager Connet and to continue to seek further guidance as the process continues.

3. ADJOURN

Council Member Jerry A. Smith Jr., J.D. discussed a meeting date for the next budget workshop meeting and the consensus of Council was to hold the meeting on Friday April 29, 2022.

There being no further discussion, the meeting was adjourned at 5:17 p.m. upon unanimous assent of the Council.

Barbara G. Volk, Mayor

ATTEST:

Angela L. Reece, City Clerk

DRAFT



MINUTES

April 7, 2022

REGULAR MEETING OF THE CITY COUNCIL [ELECTRONIC]
CITY OPERATIONS CENTER | 305 WILLIAMS ST. | 5:45 p.m.

Present: Mayor Barbara G. Volk and Council Members: Mayor Pro Tem Lyndsey Simpson, Debbie O'Neal-Roundtree, and Jerry A. Smith Jr., J.D.

Present Remotely: Dr. Jennifer Hensley

Staff Present: City Manager John F. Connet, Assistant City Manager Brian Pahle, City Clerk Angela Reece, City Attorney Angela Beeker, 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. Council Member Dr. Jennifer Hensley 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.*

Crystal Cauley of Fifth Ave. W. addressed City Council addressed Council speaking on behalf of the 7th Avenue Community Garden located in the Green Meadows Community asking consideration for funding to install ADA height planters and a table. Ms. Cauley announced she organized a cleanup of the garden earlier this month.

Lynne Williams of Chadwick Ave. addressed City Council via zoom electronic software regarding Boyd Park and the Laura E. Corn Mini Golf. Ms. Williams asked Council to enact a moratorium on mixed use developments.

Tracey Gruver of Thrive addressed City Council via zoom electronic software regarding support of affordable housing developments in Hendersonville.

Digital comments were received from Leslie Carrie of Randal Farm Rd. requesting grant funding in support of the Community Garden.

4. CONSIDERATION OF AGENDA

Council Member Dr. Jennifer Hensley moved that City Council approve the agenda as amended by adding paragraph 4 and 5 to Closed Session to consider acquisition of property and economic development as set forth in NCGS § 143-318.11 (a)(1)(4) and (5). A unanimous roll call vote of the Council followed. Motion carried.

Council Member Jerry A. Smith Jr., J.D. moved that City Council move Items Q, Resolution in Support of an Application by the City of Brevard for USDOT RAISE Grant Funding to Construct the Ecusta Trail in Transylvania County and T, Special Event: Thanks to Henderson County Teachers Celebration move to New Business for discussion. A unanimous roll call vote of the Council followed. Motion carried.

5. CONSENT AGENDA

A. Adoption of City Council Minutes – Angela L. Reece, City Clerk

I move that City Council approve the minutes of February 23, 2022 Second Monthly Meeting, March 3, 2022 Regular Meeting, and March 11, 2022 Special Call Meeting as presented.

B. Henderson County Tax Adjustments -Amanda Lofton, 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.

C. **Revision of the Temporary Employee Leave and School Closure Policy** – Jennifer Harrell, HR Director

I move City Council adopt the Temporary Employee Leave and School Closure Policy as presented.

D. **Rescind City COVID-19 Relief Policy** – Jennifer Harrell, HR Director

I move City Council rescind the COVID-19 Relief policy approved on January 7,2021 and all subsequent versions of said policy.

E. **April 2022 Capital Project Ordinance** – Alex Norwood, Budget Analyst

I move City Council adopt the capital project ordinance for the CCTV Replacement Project (#22009).

Capital Project Ordinance #O-22-15

**CAPITAL PROJECT ORDINANCE FOR
THE EXECUTION, ACQUISITION, CONSTRUCTION, AND INSTALLATION OF THE
CCTV TRUCK REPLACEMENT PROJECT**

BE IT ORDAINED by the Governing Board of the City of Hendersonville, North Carolina that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby adopted:

Section 1: The project authorized is a City project described as the CCTV Truck Replacement Project #22009.

Section 2: The following amounts are appropriated for the project(s):

Account Codes				Account Name	Total Budget
Fund	Dept.	Account	Project		
460	7155	554002	22009	Capital Outlay – Vehicles	\$375,000
Total Project Appropriation					\$375,000

Section 3: The following revenues are anticipated to be available via transfers:

Account Codes				Account Name	Total Budget
Fund	Dept.	Account	Project		
460	0000	470100	22009	Transfer In (WS Fund 060)	(\$375,000)
Total Project Appropriation					(\$375,000)

PROJECT TO BE FUNDED USING

Section 4: The Finance Director is hereby directed to maintain within the capital project fund sufficient specific detailed accounting records to satisfy the disclosure requirements of all the contractual agreements, if applicable.

Section 5: Funds may be advanced from the Water and Sewer Fund as necessary for the purpose of making payments as due. Reimbursement requests shall be made in an orderly and timely manner.

Section 6: The Finance Director is directed to report, on a quarterly basis, on the financial status of each project element in Section 3 and Section 4.

Section 7: The Finance Director is further instructed to include a detailed analysis of past and future revenues and expenses during each annual budget submission made to the Governing Board.

Section 8: Copies of this capital project shall be furnished to the City Clerk, Finance Director, and City Manager for direction in carrying out this project.

Adopted by the City Council of the City of Hendersonville, North Carolina this 7th day of April 2022.

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

F. April 2022 Budget Amendments – Adam Murr, Budget Manager

I move City Council adopt budget amendment(s) 04072022-01, 04072022-02, and 04072022-03 as presented.

G. Approval of Leak Adjustment Policy Revision – John Buchanan, Finance Director

I move City Council approve the amendment of the Leak Adjustment Policy as presented.

H. Approval of Fiscal Year 2022 Annual Audit Contract – John Buchanan, Finance Director

I move that Council approve resolution to select Mauldin & Jenkins as auditor for the fiscal year 2022 annual audit.

Resolution #R-22-38

RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO SELECT MAULDIN & JENKINS AS AUDITOR FOR FISCAL YEAR 2022

WHEREAS, according to North Carolina General Statute 159-34, each unit of local government and public authority shall have its accounts audited as soon as possible after the close of each fiscal year by a certified public accountant or by an accountant certified by the Local government Commission as qualified to audit local government accounts and;

WHEREAS, according to North Carolina General Statute 159-34, the auditor should be selected by and shall report directly to the governing board; and

WHEREAS, Staff issued a Request for Proposal from qualified auditors in 2021 and recommended Mauldin & Jenkins be selected as auditor, which was authorized by Council in Resolution 21-27; and

WHEREAS, Mauldin & Jenkins satisfactorily completed the fiscal year 2021 annual audit;

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

1. City Council selects Mauldin & Jenkins LLC as auditor for the fiscal year 2022 annual audit
2. City Council directs the Finance Director to submit the completed LGC-205 Contract to Audit Accounts to the Local Government Commission.
3. City Council authorizes the City Manager to sign the Mauldin & Jenkins LLC Engagement Letter.

Adopted by the City Council of the City of Hendersonville, North Carolina this 7th day of April 2022.

/s/Barbara G. Volk, Mayor

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

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

I. 2021 Local Law Enforcement Block Grant Offer Acceptance & Sole Source Exception Approval – Blair Myhand, Chief of Police

I move that City Council adopt the resolution accepting the 2021 Local Law Enforcement Block Grant Program offer of \$24,500.00 and to approve the sole source purchase of VirTra training de-escalating simulator software and equipment as presented.

Resolution #R-22-39

RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO ACCEPT THE 2021 LOCAL LAW ENFORCEMENT BLOCK GRANT PROGRAM OFFER OF \$24,500.00 AND TO APPROVE THE SOLE SOURCE PURCHASE OF VIRTRA TRAINING DE-ESCALATING SIMULATOR SOFTWARE AND EQUIPMENT

WHEREAS, law enforcement officers using force incidents and relations have come under intense public scrutiny demonstrating the need for de-escalation initiatives to change the climate; and

WHEREAS, having the most technical and evidentiary equipment readily available will bring transparency in use of force incidents to the forefront for transparency, accountability, and citizen review; and

WHEREAS, having a use of force/de-escalation training simulator available to Hendersonville PD Officers would enhance decision making in use of force incidents; and

WHEREAS, NCGS 143-129(e) lists the authorized exceptions to the formal bid procedures. NCGS 143-129(e)(6) allows for purchases of apparatus, supplies, materials, or equipment to be purchasing using sole-source exception when: (i) performance or price competition for a product are not available; (ii) a needed product is available from only one source of supply; or (iii) standardization or compatibility is the overriding consideration. The governing board of a political subdivision of the State shall approve the purchases listed in the preceding sentence prior to the award of the contract; and

WHEREAS, VirTra is the only responsive and responsible source for the above-mentioned de-escalation equipment and capabilities as they relate to incorporation with the VirTra V-300-LE equipment; and

WHEREAS, the City accepts the Local Law Enforcement Block Grant Program award offer from the Governor's Crime Commission in the amount of \$24,500.00 for the purchase of VirTra De-escalation training software and equipment; and

WHEREAS, the City Manager, John Connet is the authorizing official for this grant; and

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

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

1. That the City of Hendersonville does hereby accept the 2021 Local Law Enforcement Block Grant
2. That the City finds a sole-source purchase of VirTra De-escalation training software and equipment is authorized for the City of Hendersonville Police Department.
3. Such tentative sole-source purchase is contingent upon the approval of the North Carolina Department of Public Safety/ Criminal Justice Systems Improvement Committee and the approval of additional funding request by the North Carolina Governors Crime Commission for the project (Project No. PROJ015117).

Adopted by the City Council of the City of Hendersonville, North Carolina this 7th day of April 2022.

/s/Barbara G. Volk, Mayor

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

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

J. Parking Services Ambassador Position Change –Blair Myhand, Chief of Police

I move that City Council approve the updated Parking Services Ambassador job position and description as presented.

K. Resolution to Apply for Funding for the Water Treatment Facility Master Plan – Adam Steurer, Utilities Engineer

I move City Council to adopt the Resolution by the City Council to apply for funding for the Water Treatment Facility Master Plan Study.

Resolution #R-22-40

RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL AUTHORIZING THE CITY MANAGER OR DESIGNEE TO APPLY FOR FUNDING FOR THE WATER TREATMENT FACILITY MASTER PLAN

WHEREAS, The Federal Clean Water Act Amendments of 1987 and the North Carolina the Water Infrastructure Act of 2005 (NCGS 159G) have authorized the making of loans and grants to aid eligible units of government in financing the cost of construction of wastewater treatment works, wastewater collection system, stream restoration, stormwater treatment, drinking water treatment works, and/or drinking water distribution system or other "green" project; and

WHEREAS, The City of Hendersonville has need for and intends to develop asset inventories, condition assessment of critical assets, and other components of a comprehensive asset management program for the water system; and

WHEREAS, The City of Hendersonville intends to request state grant assistance for the project.

NOW THEREFORE BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF HENDERSONVILLE:

1. That the City of Hendersonville, the Applicant, will arrange financing for all remaining costs of the project, if approved for a State grant award.
2. That the Applicant will provide for efficient completion of the project per program guidelines.
3. That John Connet, City Manager, the Authorized Official, and successors so titled, are hereby authorized to execute and file an application on behalf of the Applicant with the State of North Carolina for a grant to aid in the construction of the project described above.
4. That the Authorized Official, and successors so titled, are hereby authorized and directed to furnish such information as the appropriate State agency may request in connection with such application or the project: to make the assurances as contained above; and to execute such other documents as may be required in connection with the application.
5. That the Applicant has substantially complied or will substantially comply with all Federal, State, and local laws, rules, regulations, and ordinances applicable to the project and to Federal and State grants and loans pertaining thereto.

Adopted by the City Council of the City of Hendersonville, North Carolina this 7th day of April 2022.

/s/Barbara G. Volk, Mayor

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

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

**L. Utility Extension Agreement for the Oak Preserve Planned Residential Development –
Brendan Shanahan, Civil Engineer III**

I move that City Council approve the Resolution authorizing the City Manager to enter into a Utility Extension Agreement with OP Management, LLC for the Oak Preserve Planned Residential Development as presented and recommended by staff.

Resolution #R-22-41

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL AUTHORIZING
THE CITY MANAGER TO ENTER INTO A UTILITY EXTENSION AGREEMENT WITH
OP MANAGEMENT, LLC FOR THE OAK PRESERVE PLANNED RESIDENTIAL
DEVELOPMENT**

WHEREAS, The Federal Clean Water Act Amendments of 1987 and the North Carolina the Water Infrastructure Act of 2005 (NCGS 159G) have authorized the making of loans and grants to aid eligible units of government in financing the cost of construction of wastewater treatment works, wastewater collection system, stream restoration, stormwater treatment, drinking water treatment works, and/or drinking water distribution system or other “green” project; and

WHEREAS, The City of Hendersonville has need for and intends to develop asset inventories, condition assessment of critical assets, and other components of a comprehensive asset management program for the water system; and

WHEREAS, The City of Hendersonville intends to request state grant assistance for the project.

NOW THEREFORE BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF HENDERSONVILLE:

1. That the City of Hendersonville, the Applicant, will arrange financing for all remaining costs of the project, if approved for a State grant award.
2. That the Applicant will provide for efficient completion of the project per program guidelines.
3. That John Connet, City Manager, the Authorized Official, and successors so titled, are hereby authorized to execute and file an application on behalf of the Applicant with the State of North Carolina for a grant to aid in the construction of the project described above.
4. That the Authorized Official, and successors so titled, are hereby authorized and directed to furnish such information as the appropriate State agency may request in connection with such application or the project: to make the assurances as contained above; and to execute such other documents as may be required in connection with the application.
5. That the Applicant has substantially complied or will substantially comply with all Federal, State, and local laws, rules, regulations, and ordinances applicable to the project and to Federal and State grants and loans pertaining thereto.

Adopted by the City Council of the City of Hendersonville, North Carolina this 7th day of April 2022.

/s/Barbara G. Volk, Mayor

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

M. Utility Extension Agreement for the Horseshoe Farm Development – Brendan Shanahan, Civil Engineer III

I move that City Council approve the Resolution authorizing the City Manager to enter into a Utility Extension Agreement with Sen-Asheville I LLC for the Horseshoe Farm Development as presented and recommended by staff.

Resolution #R-22-42

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO
AUTHORIZE THE CITY MANAGER TO ENTER INTO A UTILITY EXTENSION
AGREEMENT WITH SEN-ASHEVILLE I, LLC FOR THE HORSESHOE FARM
DEVELOPMENT**

WHEREAS, the City of Hendersonville owns, operates and maintains a water distribution system to serve customers throughout Henderson County; and

WHEREAS, residential, commercial, and industrial developments often require public water service as a part of their development projects; and

WHEREAS, the Developer extends public water lines to their site, which upon completion and acceptance, are provided to the City to own, operate, and maintain; and

WHEREAS, the City requires a Utility Extension Agreement to be executed to establish requirements of both the Developer and the City for the water line extension process; and

WHEREAS, Sen-Asheville I, LLC., the “Developer” and “Owner”, will enter into a Utility Extension Agreement with the City to provide water service to the Horseshoe Farm Development.

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

1. The Utility Extension Agreement with Sen-Asheville, LLC., the “Developer” and “Owner” to provide water service to the Horseshoe Farm Development is approved, as presented.
2. City Manager is authorized to execute the Utility Extension Agreement, and to approve and execute amendments to the Utility Extension Agreement in the future provided such amendments do not impose a financial obligation upon the City.

Adopted by the City Council of the City of Hendersonville, North Carolina this 7th day of April 2022.

/s/Barbara G. Volk, Mayor

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

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

N. Utility Extension Agreement for the Cottages at Roper Farm Subdivision – Brendan Shanahan, Civil Engineer III

I move that City Council approve the Resolution authorizing the City Manager to enter into a Utility Extension Agreement with Vine Ripe Properties, LLC for the Cottages at Roper Farm as presented and recommended by staff.

Resolution #R-22-43

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO
AUTHORIZE THE CITY MANAGER TO ENTER INTO A UTILITY EXTENSION
AGREEMENT WITH VINE RIPE PROPERTIES, LLC FOR THE COTTAGES AT ROPER
FARM SUBDIVISION**

WHEREAS, the City of Hendersonville owns, operates and maintains a water distribution system to serve customers throughout Henderson County; and

WHEREAS, residential, commercial, and industrial developments often require public water service as a part of their development projects; and

WHEREAS, the Developer extends public water lines to their site, which upon completion and acceptance, are provided to the City to own, operate, and maintain; and

WHEREAS, the City requires a Utility Extension Agreement to be executed to establish requirements of both the Developer and the City for the water line extension process; and

WHEREAS, Vine Ripe Properties, LLC., the “Developer” and “Owner”, will enter into a Utility Extension Agreement with the City to provide water service to the Cottages at Roper Farm Subdivision.

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

1. The Utility Extension Agreement with Vine Ripe Properties, LLC., the “Developer” and “Owner” to provide water service to the Cottages at Roper Farm Subdivision is approved, as presented.
2. City Manager is authorized to execute the Utility Extension Agreement, and to approve and execute amendments to the Utility Extension Agreement in the future provided such amendments do not impose a financial obligation upon the City.

Adopted by the City Council of the City of Hendersonville, North Carolina this 7th day of April 2022.

/s/Barbara G. Volk, Mayor

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

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

O. Utility Extension Agreement for the O'Reilly Auto Parts – Brendan Shanahan, Civil Engineer III

I move that City Council approve the Resolution authorizing the City Manager to enter into a Utility Extension Agreement with Boyd L. Hyder for the O'Reilly Auto Parts as presented and recommended by staff.

Resolution #R-22-44

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO
AUTHORIZE THE CITY MANAGER TO ENTER INTO A UTILITY EXTENSION
AGREEMENT WITH BOYD L. HYDER FOR THE O'REILLY AUTO PARTS STORE**

WHEREAS, the City of Hendersonville owns, operates and maintains a sewer collection system to serve customers throughout Henderson County; and

WHEREAS, residential, commercial, and industrial developments often require public sewer service as a part of their development projects; and

WHEREAS, the Developer extends public sewer lines to their site, which upon completion and acceptance, are provided to the City to own, operate, and maintain; and

WHEREAS, the City requires a Utility Extension Agreement to be executed to establish requirements of both the Developer and the City for the sewer line extension process; and

WHEREAS, Boyd L. Hyder, the “Developer” and “Owner”, will enter into a Utility Extension Agreement with the City to provide water service to the O'Reilly Auto Parts Store.

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

1. The Utility Extension Agreement with Boyd L. Hyder, the “Developer” and “Owner” to provide sewer service to the O'Reilly Auto Parts Store is approved, as presented.
2. City Manager is authorized to execute the Utility Extension Agreement, and to approve and execute amendments to the Utility Extension Agreement in the future provided such amendments do not impose a financial obligation upon the City.

Adopted by the City Council of the City of Hendersonville, North Carolina this 7th day of April 2022.

/s/Barbara G. Volk, Mayor

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

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

P. French Broad River Raw-Intake Project Amended Loan Offer Acceptance – Brent Detwiler, City Engineer

I move that City Council approve the Resolution Accepting the North Carolina Drinking Water State Revolving Fund Loan Offer of \$23,514,035 from the North Carolina Department of Environmental Quality for the French Broad River Raw-Water Intake Project and authorize the City Manager to execute the funding offer and other required documents for the same project; as presented and recommended by staff.

Resolution #R-22-45

RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL ACCEPTING THE DRINKING WATER STATE REVOLVING FUND LOAN OFFER

WHEREAS, the Safe Drinking Water Act Amendments of 1996 and the North Carolina Water Infrastructure Fund have authorized the making of loans and/or grants, as applicable, to aid eligible drinking water system owners in financing the cost of construction for eligible drinking water infrastructure; and

WHEREAS, the North Carolina Department of Environmental Quality has offered a Drinking Water State Revolving Fund Loan in the amount of \$23,514,035.00 for the construction of the French Broad River Raw-Water Intake Project, hereafter referred to as the “Project”; and

WHEREAS, the City of Hendersonville intends to construct said Project in accordance with the engineering plans and specifications that have been approved by the North Carolina Public Water Supply Section.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HENDERSONVILLE:

1. That City of Hendersonville does hereby accept the Drinking Water State Revolving Fund Loan offer in the amount of \$23,514,035.00; and
2. That the City of Hendersonville does hereby give assurance to the North Carolina Department of Environmental Quality that they will adhere to all applicable items specified in the standard “Conditions” and “Assurances” of the Department’s funding offer, awarded in the form of a Drinking Water State Revolving Fund Loan; and
3. That John Connet, City Manager, and successors so titled, is hereby authorized and directed to furnish such information, as the appropriate State agency may request, in connection with such application or the Project; to make the assurances as contained above; and to execute such other documents as may be required in connection with the application; and
4. That the City of Hendersonville has complied substantially or will comply substantially with all Federal, State, and local laws, rules, regulations, and ordinances applicable to the Project, and to Federal and State grants and loans pertaining thereto.

Adopted by the City Council of the City of Hendersonville, North Carolina this 7th day of April 2022.

/s/Barbara G. Volk, Mayor

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

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

R. Annexation: Certificate of Sufficiency- 1448 and 1450 Old Spartanburg Road (C22-21-ANX) – Tyler Morrow, Planner II

I move Council to accept the City Clerk's Certificate of Sufficiency for the petition submitted by Samuel R. Henderson of Appalachian Dew, LLC and set May 5th, 2022 as the date for public hearing.

Resolution #R-22-47

RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL FIXING DATE OF PUBLIC HEARING ON QUESTION OF ANNEXATION PURSUANT TO G.S. 160A-58.2

WHEREAS, a petition requesting annexation of the contiguous area described herein has been received; and

WHEREAS, certification by the City Clerk as to the sufficiency of the petition has been made;

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

Section 1. A public hearing on the question of annexation of the contiguous area described herein will be held at City Operations Center located at 305 William St. Hendersonville NC, 28792 at 5:45 p.m. May 5th, 2022, or as soon thereafter as it may be heard.

Section 2. The area proposed for annexation is described as follows:

BEING all of that real property consisting of PINs 9578-52-1337 and 9578-52-0340, described in the plat recorded in Book 2022 - ____ [to be inserted at recording of the plat] of the Henderson County Registry, said PINs 9578-52-1337 and 9578-52-0340 being described by metes and bounds as follows:

Situated in the City of Hendersonville, Henderson County, North Carolina and being more particularly described as follows:

Commencing at an existing iron pin on the eastern margin of Old Spartanburg Road and being the northwest corner of Lot 1 as shown on Plat Slide 10786 as recorded in the Register of Deeds for Henderson County, North Carolina and running with the northern line of Lot 1 N58-03-07E for a distance of 191.68 feet to the Point of Beginning being the northwest corner of Lot 4 as shown on Plat Slide 10786, thence running N58-03-07E for a distance of 210.85 feet to an existing bedrail; thence running S36-45-28E for a distance of 168.69 feet to a point; thence running S36-16-28E for a distance of 47.89 feet to an existing iron pin; thence running with an unnamed private gravel road S50-41-48W for a distance of 245.62 feet to and existing iron pin; thence running N28-28-41W for a distance of 247.75 feet with the boundary of the City of Hendersonville to an existing iron pin being the Point of Beginning. Said property contains 1.21 Acres more or Less

Re: Petition for Contiguous Annexation
Petitioners: Appalachian Dew, LLC (Samuel R. Henderson, Vice President)
File No. C22-21-ANX

Section 3. Notice of the public hearing shall be published once in The Hendersonville Times-News, a newspaper having general circulation in the City of Hendersonville, at least 10 days prior to the date of the public hearing.

Adopted by the City Council of the City of Hendersonville, North Carolina this 7th day of April 2022.

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

S. Consider Negotiated Offer to Purchase Lot 15, Overlook Subdivision, Plat Cabinet B, Slide 375A - Angela S. Beeker, City Attorney

I move City Council to adopt the Resolution By The City of Hendersonville City Council of Proposed Acceptance of Negotiated Offer as presented.

Resolution #R-22-48

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL OF PROPOSED
ACCEPTANCE OF NEGOTIATED OFFER**

WHEREAS, the City of Hendersonville owns certain property described as 328 N Overlook Terrace, Hendersonville, NC 28739, being all of lot 15 of the Overlook Subdivision as shown on the plat thereof recorded in Plat Cabinet B, at Slide 375A, in the Office of the Register of Deeds for Henderson County, having a tax parcel ID of 9568057733, and having been acquired by the City of Hendersonville in Deed Book 773 at Page 879 of the Henderson County Register of Deeds Office ("Property"); and

WHEREAS, North Carolina General Statute Section 160A-269 permits the City to sell property by upset bid after receiving and offer to purchase; and

WHEREAS, the City has received a NEGOTIATED OFFER RECEIVED PURSUANT TO N.C.G.S. § 160A-269 ("Offer"), a copy of which is attached hereto and incorporated herein by reference; and

WHEREAS, pursuant to the Offer, Keith M. Maxwell and Cynthia E. Maxwell, Trustees of the Keith M. Maxwell Living Trust; and Keith M. Maxwell and Cynthia E. Maxwell, Trustees of the Cynthia E. Maxwell Living Trust, (“Buyers”), are offering to purchase the Property for the sum of \$10,000, subject to the terms and conditions contained within the Offer; and

WHEREAS, subject to the terms below, the Hendersonville City Council wishes to issue a proposed acceptance of the Offer.

NOW THEREFORE, BE IT RESOLVED, the City Council of the City of Hendersonville resolves that:

1. The Council declares the Property surplus and proposes to accept the Offer pursuant to the procedures of 160A-269.
2. The Buyer is required to deposit with the City Clerk a sum equal to 5 % of the offer, or \$500.00. The Clerk will cause a notice to be published in a newspaper of record advising that upset bids will be accepted within 10 days of the date of publication, which bid shall increase the proposed sales price by at least an amount equal to 10% of the first \$1,000.00 of the purchase price and 5% of the excess. Such upset bids shall be made to the City Clerk and accompanied by a deposit equal to 5% of the new purchase price, at which time the Clerk shall then publish a new notice advising that further upset bids, increased in the same minimum amount may be accepted within 10 days from the date of publication.
3. Each bidder submitting an upset bid shall be bound by the same terms and conditions as contained in the Offer. Each bidder shall therefore be required to sign an offer in the form of the Offer attached hereto as Exhibit A, with the only differences being (1) a revised purchase price; and (2) modification of the terms of the upset bid procedure described in the Offer to reflect the terms of this Resolution.
4. When there are no further bidders, the high bid shall be reported to the Council by the Clerk.
5. Closing shall occur within 30 days of the issuance of a final acceptance by the Council.
6. The City reserves the right to withdraw the property from sale at any time before the issuance of a final acceptance and the right at any time to reject all bids.

Adopted by the City Council of the City of Hendersonville, North Carolina this 7th day of April 2022.

/s/Barbara G. Volk, Mayor

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

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

Council Member Lyndsey Simpson moved that City Council approve the consent agenda as amended. A unanimous roll call vote of the Council followed. Motion carried.

6. PRESENTATIONS

A. Proclamation - Child Abuse Prevention Month - Week of the Young Child - Mayor Barbara G. Volk

Mayor Barbara G. Volk issued a proclamation declaring the month of April, 2022 to be Child Abuse Prevention Month and Week of the Young Child in the City of Hendersonville and call upon all citizens, community agencies, faith groups, medical facilities, elected leaders, and businesses to increase their participation in our efforts to support families, thereby supporting early childhood programs and preventing child abuse and strengthening the communities in which we live.

B. Proclamation – Earth Week - Mayor Barbara G. Volk

Mayor Barbara G. Volk issued a proclamation declaring the week of April 19 through April 24, 2022 to be Earth Week in the City of Hendersonville and encouraged all citizens and businesses to combat climate change and environmental degradation, support green economy initiatives, and to encourage others to undertake similar actions.

C. Monarch Butterfly Pledge - Mayor Barbara G. Volk

Mayor Barbara G. Volk issued a pledge committing to help restore habitat for the Monarch butterfly within the City of Hendersonville and encourage our residents to do the same, so that these magnificent butterflies will once again flourish across the continent.

D. Environmental Sustainability Board Annual Presentation- Mary Ellen Kustin, Chair

Chairperson Mary Ellen Kustin presented an Environmental Sustainability Board update to Council including topics surrounding Earth Week, Sustainability Plan, Plastic Free Initiative, and Pollinators. Chairperson Kustin thanked Council for their commitment to sustainability and recommended hiring a sustainability manager to assist with initiatives. Chairperson Kustin reported on the Plastic Free Initiative stating there have been 12 local businesses who have taken the pledge to become plastic free. Chairperson Kustin discussed the recent partnership between Bullington Gardens and Bee City USA stating their focus will be more on coordination of pollinator events and education. Council Member Lyndsey Simpson extended thanks and appreciation for the dedication and hard work of the ESB board.

E. Barbara Hughes Recognition as Main Street Champion – Lew Holloway, Community Development Director

Downtown Manager Jammie Carpenter recognized Barbara Hughes, owner of Narnia Studios as Hendersonville's Main Street Champion and presented her with a plaque and medal of appreciation. City Council Members extended their thanks and appreciation to Barbara for her dedication to Downtown Hendersonville as a merchant and event organizer. Jordan Barnes, on behalf of Representative Tom Tillis presented a letter to Ms. Hughes recognizing her outstanding achievement and thanking her for her hard work and dedication to the community

F. Recognition for Completion of the UNCC Fire and Rescue Management Institute – John Connet, City Manager

City Manager John Connet and Mayor Barbara G. Volk recognized Fire Chief James Miller, Deputy Fire Chief Justin Ward, and Battalion Fire Chief Christian Miller for completing the University of North Carolina at Charlotte's Fire and Rescue Management Institute, a professional development certificate program designed for company officers, chief officers, and future leaders within the fire service. Manager Connet stated Fire and Rescue professionals in managerial and supervisory roles are expected to be team leaders and must possess the ability to guide their staff in the achievement of department, division, or unit goals. Manager Connet extended congratulations and thanks for their pursuit of continued education.

G. Recognition of Brandon Mundy for Completing Road Scholar Program - John Connet, City Manager

City Manager John Connet, Public Works Director Tom Wooten, and Mayor Barbara G. Volk recognized Public Work's Superintendent Brandon Mundy for completing the North Carolina Local Technical Assistance Program's Road Scholar Certification Program. This program requires individuals to attend 7 different training sessions regarding road maintenance and safety. Manager Connet stated he believed that Brandon is the first City of Hendersonville team member to complete this program.

7. PUBLIC HEARINGS**A. Closeout of the 2018 CDBG-NR Project (Grey Mill Apartments), Grant 16-D-2979 – John Connet, City Manager, Mary Roderick, PhD, Regional Planner- Land of Sky**

City Manager John Connet recalled receiving a grant for the rehabilitation of the Grey Hosiery Mill. Project was successful. Manager Connet reminded everyone the City received \$500,000 in CDBG (Community Development Block Grant) funding from the NC Department of Commerce for the rehabilitation of the Grey Hosiery Mill into 35 apartments, including 7 units designated for moderate income households (earning 80% or less of the HUD Median Family Income). He said the building has been completed and occupied since 2020 and a final public hearing is required by NC Department of Commerce to accept comments. The contents of the notice were discussed.

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

Lynne Williams of Chadwick Avenue addressed Council remotely via Zoom electronic software in support of the project and previous Council Member Steve Caraker's efforts.

No further action was necessary. There were no further comments. The public hearing was closed at 6:28 p.m.

B. Rezoning: Standard Rezoning (Zoning Map Amendment) – Brooklyn Ave (P22-14-RZO) – Matthew Manley, AICP – Planning Manager

Planning Manager Matthew Manley stated the City is in receipt of a zoning map amendment application from Mark B. Pace and said the applicant is requesting to rezone a portion of the subject property (+/- 1.60 acres) from R-15 (Medium Density Residential) to C-3 Highway Business to match the current zoning on the remainder of the property (.66 acres). Mr. Manley stated the subject parcel (PIN 9578-42-2392) is located at the intersection of Brooklyn Ave and Old Spartanburg Rd and is approximately 2.26 acres in total and said the site is bordered on the west by Edith Dr. Mr. Manley stated if Council approved rezoning, there would not be a binding site plan or list of uses or conditions placed on the site and said all permitted uses within the C-3 district would be allowed on the site.

Staff presented and discussed with City Council an analysis of the consistency with the relevant portions of the Comprehensive Land Use Plan and the Planning Board's recommendation. Both were considered by the City Council in addition to supporting maps and documents provided in the agenda packet.

The owner of the property, Mark Pace of Terrace Drive Laurel Park addressed City Council in support of rezoning this property and stated this parcel has sat vacant for many years.

The City Clerk confirmed this public hearing has been advertised in accordance with North Carolina General Statutes. The public hearing was opened at 6:38 p.m.

There were no comments.

The public hearing was closed at 6:38p.m.

Council Member Jerry A. Smith Jr., J.D. 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 (PIN: 9578-42-2392) from R-15 (Medium Density Residential) and C-3 (Highway Business) to C-3 (Highway Business) based on the following: 1. The petition is found to be consistent with the City of Hendersonville 2030 Comprehensive Plan based on the information from the staff analysis and the public hearing, and because the Neighborhood Activity Center designation calls for neighborhood retail sales and services as a primary recommended land use; and office, multi-family and other similar uses as secondary recommended land uses at locations which align with those listed under LU 8.1. 2. We find this petition to be reasonable and in the public interest based on the information from the staff analysis and the public hearing, and because: 1. The petition would be an extension of the existing C-3 zoning district and eliminate the split-zoning of the subject parcel. 2. The petition allows for increased intensity of uses at the intersection of two minor thoroughfares. 3. The petition would align with the parcels proximate to the subject property which are zoned C-3 and located between Old Spartanburg Rd and Spartanburg Hwy. and 4. The petition creates the opportunity for infill development at a greater density / intensity. A unanimous roll call vote of the Council followed. Motion carried.

REZONING Ordinance #O-22-16

AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND THE OFFICIAL ZONING MAP OF THE CITY OF HENDERSONVILLE FOR A PORTION OF PARCEL NUMBER 9578-42-2392 BY CHANGING THE ZONING DESIGNATION FROM R-15 MEDIUM DENSITY RESIDENTIAL TO C-3 HIGHWAY BUSINESS

IN RE: Parcel Number: 9578-42-2392 Brooklyn Ave Rezoning
(File # P22-14-RZO)

WHEREAS, the City is in receipt of a Conventional Rezoning application from Mark B. Pace (applicant & property owners).

WHEREAS, the Planning Board took up this application at its regular meeting on March 14th, 2022; voting 5-1 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 April 7th, 2022, 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: A portion of parcel number 9578-42-2392 from R-15 Medium Density Residential to C-3 Highway Business.
2. Any development of the parcels shall occur in accordance with the Zoning Ordinance of the City of Hendersonville, North Carolina.
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 7th day of April 2022.

/s/Barbara G. Volk, Mayor

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

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

C. Rezoning: Conditional Zoning District – Schroader Honda Expansion (P21-70-CZD) –
Tyler Morrow, Planner II

Planner Tyler Morrow stated the City is in receipt of an application for a conditional zoning district from Casey Schroader of Schroader's Honda and said the applicant is requesting to rezone the subject property, PIN 9579-45-0902, located at 220 Michelle Drive. Mr. Morrow stated the subject property was previously two separate parcels PINs 9579-35-8920 and 9579-45-0833 and said since receiving the rezoning application, the property owners have combined the two parcels into one parcel to create PIN 9579-45-0902. Mr. Morrow stated the site plan shows a two story 32,985 square foot expansion on the current Schroader Honda site which includes space for sales and office area. Mr. Morrow stated the one story 10,400 square foot building that Schroader Honda currently uses would remain as a warehouse and service area, as well as an existing one story 9,689 square foot metal warehouse building on the rear of the property. Mr. Morrow said the proposed development would be approximately 53,074 square feet and said due to the project involving more than 50,000 square feet of development and redevelopment, this project was required to undergo a conditional rezoning. Mr. Morrow stated the access to this site is off of an NCDOT roadway and would be reviewed by NCDOT for any driveway permitting and site distance issues.

Council Member Debbie O'Neal-Roundtree asked staff to provide a definition of regional activity center and Mr. Morrow advised it is defined as highly commercial, intense use property and said examples include retail and restaurants.

Staff presented and discussed with City Council an analysis of the consistency with the relevant portions of the Comprehensive Land Use Plan and the Planning Board's recommendation. Both were considered by the City Council in addition to supporting maps and documents provided in the agenda packet.

The City Clerk confirmed this public hearing has been advertised in accordance with North Carolina General Statutes. The public hearing was opened at 6:54 p.m.

Ken Fitch of Patton St. addressed City Council via Zoom electronic software expressing support rezoning to allow expansion and upgrade of business but asked for alternate driveway entrance be considered on the western side of the property.

The public hearing was closed at 6:55p.m.

Council Member Jerry A. Smith Jr., J.D. clarified that NCDOT will review the driveway permitting process and can require a one-way entrance if safety is a factor.

Council Member Dr. Jennifer Hensley moved that City Council adopt of an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of the subject property [PIN 9579-45-0902] from C-3 Highway Business to C-3 CZD Highway Business Conditional Zoning District based on the site plan submitted by the applicant, [dated 3-8-2022,] and presented at this meeting and subject to the following: The development shall be consistent with the site plan, including the list of permitted uses and applicable conditions as presented on the site plan.

Permitted uses and applicable conditions presented on the site plan shall be amended to include: all the conditions from the Planning Board and Tree Board except for the entrance condition. The petition is found to be [consistent] with the City of Hendersonville 2030 Comprehensive Plan based on the information from the staff analysis and because the Regional Activity Center designation calls for community and regional retail sales and services as a primary recommended land use and offices as a secondary recommended land use under Strategy LU-9.2 and 9.3. We find this petition to be reasonable and in the public interest based on the information from the staff analysis and the public hearing, and because the development is an expansion of an existing use/business in this area, the subject property is classified as a priority infill area on Map 8.3a, and a portion of the property is identified as a development opportunity on Map 8.2b. A unanimous roll call vote of the Council

followed.

Motion

carried.

CONDITIONAL REZONING Ordinance #O-22-17

AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND THE OFFICIAL ZONING MAP OF THE CITY OF HENDERSONVILLE FOR PARCEL POSSESSING PARCEL IDENTIFICATION NUMBER 9579-45-0902 BY CHANGING THE ZONING DESIGNATION FROM C-3 HIGHWAY BUSINESS TO C-3 CZD HIGHWAY BUSINESS– CONDITIONAL ZONING DISTRICT)

IN RE: Parcel Number: 9579-45-0902– 220 Mitchell Drive (Schroader Honda Expansion) - (File # P21-70-CZD)

WHEREAS, the City is in receipt of a Conditional Rezoning application from Casey Schroader (Applicant) and Leonard and Catherine Schroader (Owner) for the development of a two story 32,985 square foot expansion of the Schroader Honda business while retaining 20,089 square feet of existing buildings on 4.007 acres, and

WHEREAS, the Planning Board took up this application at its regular meeting on March 14th, 2022; 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 April 7th, 2022, 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 Number: 9579-45-0902 by changing the Zoning designation from C-3 Highway Business to C-3 CZD Highway Business– 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 based on the site plan submitted by the applicant and subject to the following.
 - a. Permitted uses shall include:
 - i. Automobile sales & service establishments
 - ii. Offices, business, professional and public
 - iii. Retail stores
 - b. Conditions that shall be satisfied prior to final site plan approval include:
 - i. Require natural vegetation be retained on slope outside the disturbance and appropriate native grasses and herbaceous plants be planted beyond the impermeable parking surface, and down to and around the retaining pond.
 - ii. Require replanting of trees, shrubs, grasses, and herbaceous plants in the slope area, to be disturbed, just north of retaining pond. This will provide a buffer and filter as well as decrease erosion and water runoff. It can provide a transition to abutting property as well as additional future cover. No turf grasses to be used.
 - iii. Reduce the required off street parking from 118 parking spaces to 30 parking spaces.

3. This ordinance shall not be effective until the stipulated list of use(s) and conditions, established herein, is consented to in writing by the applicant and all owners of the subject property. Upon such written consent, this ordinance shall be effective retroactive to the date of its adoption.

Adopted by the City Council of the City of Hendersonville, North Carolina this 7th day of April 2022.

/s/Barbara G. Volk, Mayor

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

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

D. Rezoning: Conditional Zoning District – Apple Ridge (P22-08-CZD) – Tyler Morrow, Planner II

Planner Tyler Morrow stated the City is in receipt of an application for a conditional zoning district from The Housing Assistance Corporation and Thomas H. and Sherry S. Thompson, property owners and said the applicants are requesting to rezone the subject property, PIN 9579-74-0966 located at 524 E. Prince Road, from R-15, Medium Density Residential to PRD CZD, Planned Residential Development Conditional Zoning District for the construction of a multi-family development consisting of 60 apartment units and 20 single-family dwellings on approximately 16.90 acres. Mr. Morrow stated the proposed dwelling density is 4.73 units per acre and said no other uses are proposed to be permitted by the rezoning. Mr. Morrow stated the site plan shows three multi-family structures and a club house and includes thirty 3-bedroom units and thirty 1–2-bedroom units as well as twenty single family lots ranging in size from 0.16 acres to 0.31 acres.

Staff presented and discussed with City Council an analysis of the consistency with the relevant portions of the Comprehensive Land Use Plan and the Planning Board’s recommendation. Both were considered by the City Council in addition to supporting maps and documents provided in the agenda packet.

Housing Assistance Corporation Executive Director Ashlyn McCoy addressed City Council in support for the project stating the need for affordable and workforce housing is critical and said the multi-family portion of this project has been submitted for a tax credit through the North Carolina Housing Finance Agency. Director McCoy asked Council to remove a condition proposed by the Planning Board condition requiring a minimum of 50% of the housing of each phase to meet the need of 80% or less AIM (area median income) stating she wanted to be fair to the applicant in the event the application was not approved.

Will Buie of WGLA Engineering addressed City Council in support for the project and discussed the site plan and preservation of buffers and stream corridors. Mr. Buie discussed Tree Board recommended conditions and confirmed he did not agree to additional plantings along stream corridors and removal of invasive plant species due to the significant cost that would be incurred. Mr. Buie stated removal of invasive plants already established on the site could go into the hundreds of thousands of dollars. Mr. Buie confirmed agreement to preserve stream corridors and open space as well as existing trees and vegetation along stream corridors and at property buffers.

The City Clerk confirmed this public hearing has been advertised in accordance with North Carolina General Statutes. The public hearing was opened at 7:22 p.m.

Annette Banks of East Prince Road addressed Council regarding the pump house being moved 100 ft from the property line. Ms. Banks expressed concerns regarding grading and runoff and asked if areas would be mass graded. Mr. Buie stated the home sites, and lots would not be graded but apartment lots would.

Ken Fitch of Patton St. addressed Council via Zoom electronic software stating the project was designed to be compatible with environment and has addressed neighbor concerns of the site plan. Mr. Fitch expressed support for approval of the project.

Lynne Williams of Chadwick Ave. addressed Council via Zoom electronic software stating there is a wildlife corridor through the property and asked for consideration to protect it. Ms. Williams asked for support of Tree Board recommendations and program funding.

The public hearing was closed at 7:31p.m.

Council Member Jerry A. Smith Jr., J.D. discussed remove the condition of the Planning Board requiring a minimum of 50% of the housing of each phase to meet the need of 80% or less AMI (Area Median Income) as Housing Assistance Corporation asked. Council agreed to remove this.

Council Member Dr. Jennifer Hensley asked Council to send a letter of support to the North Carolina Housing Finance Agency in support of this project. Council agreed.

Council Member Debbie O'Neal-Roundtree advised the Tree Board will be participating with the Neighborwoods Project.

Council Member Jerry A. Smith Jr., J.D. 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 (PIN: 9579-74-0966) from R-15 (Medium Density Residential) to PRD-CZD (Planned Residential Development – Conditional Zoning District) based on the site plan submitted by the applicant, [dated 3-25-22,] and presented at this meeting and subject to the following: 1. The development shall be consistent with the site plan, including the list of permitted uses and applicable conditions as presented on the site plan. Permitted uses and applicable conditions presented on the site plan shall be amended to exclude the condition of the Planning Board requiring a minimum of 50% of the housing of each phase to meet the need of 80% or less AMI (Area Median Income). The petition is found to be consistent with the City of Hendersonville 2030 Comprehensive Plan based on the information from the staff analysis and because the Business Center designation calls for multi-family as a secondary recommended land use and the proposed site plan aligns with some of the development guidelines under strategy LU 13.4. We find this petition to be reasonable and in the public interest based on the information from the staff analysis and the public hearing, and because the development addresses the need for affordable housing with two different housing types (PH-2.2), the addition of multi-family and single-family residential addresses an ongoing supply need and is in keeping with the surrounding land uses, and the topography, the presence of a blue line stream and the adjacent single-family neighborhood makes the rear of the subject property more conducive for single-family development. A unanimous roll call vote of the Council followed. Motion carried.

CONDITIONAL REZONING Ordinance #O-22-18

AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND THE OFFICIAL ZONING MAP OF THE CITY OF HENDERSONVILLE FOR PARCEL POSSESSING PARCEL IDENTIFICATION NUMBER 9579-74-0966 BY CHANGING THE ZONING DESIGNATION FROM R-15 MEDIUM DENSITY RESIDENTIAL TO PRD-CZD (PLANNED RESIDENTIAL DEVELOPMENT– CONDITIONAL ZONING DISTRICT)

IN RE: Parcel Number: 9579-74-0966 – 524 E. Prince Road (Apple Ridge)
(File # P22-08-CZD)

WHEREAS, the City is in receipt of a Conditional Rezoning application from Ashlynn McCoy of The Housing Assistance Corporation (applicant) and Thomas and Sherry Thompson (property owners) for the development of 60 apartments and 20 single family homes on approximately 16.90 acres, and

WHEREAS, the Planning Board took up this application at its regular meeting on March 14th, 2022; 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 April 7th, 2022, 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 Number: 9579-74-0966 from R-15 Medium Density Residential to PRD-CZD (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 based on the site plan submitted by the applicant and subject to the following.
 - a. Permitted uses shall include:
 - i. Residential Dwellings, Multi-Family
 - ii. Residential Dwellings, Single Family
 - b. Conditions that shall be satisfied prior to final site plan approval include:
 - i. Preserve as many 12" or larger canopy trees as possible.
 - ii. All preserved trees must be protected from construction activities as prescribed in the zoning code 15-4c regardless of use for a tree credit.
 - iii. Make one stormwater control measures a stormwater wetland if the soil conditions allow a stormwater wetland. This would have to be determined during the detailed design process.
3. This ordinance shall not be effective until the stipulated list of use(s) and conditions, established herein, is consented to in writing by the applicant and all owners of the subject property. Upon such written consent, this ordinance shall be effective retroactive to the date of its adoption.

Adopted by the City Council of the City of Hendersonville, North Carolina this 7th day of April 2022.

/s/Barbara G. Volk, Mayor

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

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

8. UNFINISHED BUSINESS

There was no unfinished business.

9. NEW BUSINESS

A. **Resolution of Support for Construction of Ecusta Trail Section Between Kanuga and S. Main Street** – *John Connet, City Manager*

City Manager John Connet stated the preliminary plans for construction of the Ecusta Trail indicate that construction will begin at Kanuga Road and proceed through Laurel Park to the Henderson County boundary and said staff believes that the appropriate starting point for the trail is at South Main Street. Manager Connet also recalled a recent public input meeting where citizens also preferred this connection and said staff is asking the City Council to adopt a resolution asking the Rails to Trails Advisory Committee to support the construction of the S. Main Street to Kanuga Road section during Phase I of the project.

Council Member Debbie O'Neal Roundtree moved that City Council adopt a Resolution Supporting the Construction of the Ecusta Trail section between Kanuga Road and S. Main Street as part of Phase I Construction as presented. A unanimous roll call vote followed. Motion carried.

Resolution #R-22-49

RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL REQUESTING THAT THE KANUGA TO SOUTH MAIN STREET SECTION OF THE ECUSTA TRAIL BE CONSTRUCTED AS PART OF THE FIRST PHASE

WHEREAS, the City of Hendersonville has been a strong supporter of the Ecusta Trail since its inception; and

WHEREAS, the first phase of the Ecusta Trail is currently planned to begin at Kanuga Road and move west to the French Broad River crossing; and

WHEREAS, there is limited access to public parking and restrooms at Kanuga Road and the City of Hendersonville is working with NCDOT to integrate critical bicycle and pedestrian infrastructure into the S. Main Street/White Street Improvement Projects; and

WHEREAS, the City of Hendersonville believes that the City's S. Main Street property should serve as a primary trailhead for the Ecusta Trail as a part of the first phase development in order to provide public amenities and access to the trail from downtown and developing areas south and east of Hendersonville;

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

1. The City of Hendersonville formally requests the Henderson County Rails to Trails Advisory Committee request that Henderson County commit to constructing the Kanuga to South Main Street section of the Ecusta Trail as part of first phase.
2. The City of Hendersonville commit up to \$46,000 for the engineering, permitting and design of this section of the Ecusta Trail.

Adopted by the City Council of the City of Hendersonville, North Carolina this 7th day of April 2022.

/s/Barbara G. Volk, Mayor

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

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

B. Hendersonville Water and Sewer Strategic Plan – Lee Smith, Utilities Director

Utilities Director Lee Smith addressed Council recalling the Water and Sewer department's recent engagement with Fountainworks, a consultancy with extensive experience advising public sector organizations, to develop a Strategic Plan for the City's Water & Sewer department. Director Smith stated this plan provides a comprehensive roadmap for the utility and took shape through various strategy sessions with both internal and external stakeholders including the Water & Sewer Advisory Council. Director Smith stated the Strategic Plan articulates the department's identity, strengthens its purpose, and identifies eight high-level strategic focus areas for the utility. Director Smith recalled presenting the plan to the Water Sewer Advisory Council in May 2021 and subsequently incorporating their concerns into the current draft plan. The plan may be viewed on the City's website.

Council Member Jerry A. Smith Jr., J.D. inquired regarding the need for additional staff and Director Smith clarified he is working with the City Manager to determine personnel needs and confirmed some positions requiring more skills are highly competitive with other utilities.

Council Member Lyndsey Simpson moved that City Council approve the Hendersonville Water & Sewer Strategic Plan as presented. A unanimous roll call vote followed. Motion carried.

C. Resolution to Apply for Funding for the WWTF Biosolids Dryer Project – Adam Steurer, Utilities Engineer

Utilities Engineer Adam Steurer addressed Council stating the North Carolina Department of Environmental Quality Division of Water Infrastructure is accepting State Revolving Fund (SRF) low-interest loan applications for water and wastewater projects and said staff is recommending applying for a SRF low-interest loan to fund the Wastewater Treatment Facility (WWTF) Biosolids Thermal Dryer Project. Mr. Steurer described the function of the dryer and provided a history of production of biosolids and processes. Mr. Steurer discussed increased landfill disposal fees and advised these fees are projected to increase over three percent annually in addition to increased fuel costs to transport waste to locations near Charlotte. Mr. Steurer stated the dryer would provide an eighty-two percent reduction by removing the liquid from the waste and said the byproduct could be used in agriculture. Mr. Steurer stated the project would greatly reduce the amount of waste being transported which will result in a cost savings on tipping fees.

Council Member Lyndsey Simpson moved that City Council to adopt the Resolution by the City Council to apply for funding for the Wastewater Treatment Facilities Biosolids Thermal Dryer Project as presented. A unanimous roll call vote followed. Motion carried.

Resolution #R-22-50**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO APPLY FOR FUNDING FOR THE WWTF BIOSOLIDS THERMAL DRYER PROJECT**

WHEREAS, The Federal Clean Water Act Amendments of 1987 and the North Carolina the Water Infrastructure Act of 2005 (NCGS 159G) have authorized the making of loans and grants to aid eligible units of government in financing the cost of construction and studies of wastewater treatment works, and;

WHEREAS, The City of Hendersonville has need for and intends to construct a wastewater treatment works project described as WWTF Biosolids Thermal Dryer and related equipment, and;

WHEREAS, The City of Hendersonville intends to request State loan and/or grant assistance for the project.

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

1. That City of Hendersonville, the Applicant, will arrange financing for all remaining costs of the project, if approved for a State loan and/or grant award.
2. That the Applicant will adopt and place into effect on or before completion of the project a schedule of fees and charges and other available funds which will provide adequate funds for proper operation, maintenance, and administration of the system and the repayment of all principal and interest on the debt.
3. That the governing body of the Applicant agrees to include in the loan agreement a provision authorizing the State Treasurer, upon failure of the City of Hendersonville to make scheduled repayment of the loan, to withhold from the City of Hendersonville any State funds that would otherwise be distributed to the local government unit in an amount sufficient to pay all sums then due and payable to the State as a repayment of the loan.
4. That the Applicant will provide for efficient operation and maintenance of the project on completion of construction thereof.
5. That John Connet, City Manager, the Authorized Official, and successors so titled, is hereby authorized to execute and file an application on behalf of the Applicant with the State of North Carolina for a loan and/or grant to aid in the study of or construction of the project described above.
6. That the Authorized Official, and successors so titled, is hereby authorized and directed to furnish such information as the appropriate State agency may request in connection with such application or the project: to make the assurances as contained above; and to execute such other documents as may be required in connection with the application.
7. That the Applicant has substantially complied or will substantially comply with all Federal, State, and local laws, rules, regulations, and ordinances applicable to the project and to Federal and State grants and loans pertaining thereto.

Adopted by the City Council of the City of Hendersonville, North Carolina this 7th day of April 2022.

/s/Barbara G. Volk, Mayor

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

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

Q. Resolution in Support of an Application by the City of Brevard for USDOT RAISE Grant Funding to Construct the Ecusta Trail in Transylvania County – Brent Detwiler, City Engineer

City Engineer Brent Detwiler addressed Council stating the City of Brevard is applying for the United States Department of Transportation's Rebuilding American Infrastructure with Sustainability and Equity (RAISE) Grant. Mr. Detwiler recalled ongoing support of the Ecusta Trail by Council and said the City of Brevard is applying for funding for design and construction of the portion of the trail in Transylvania County. Council Member Jerry A. Smith Jr., J.D. encouraged citizens to reach out to their elected officials to keep the momentum moving forward on trail construction.

Council Member Jerry A. Smith Jr., J.D. moved that City Council approve the resolution in support of an application by the City of Brevard for USDOT RAISE grant funding to construct the Ecusta Trail in Transylvania County. A unanimous roll call vote followed. Motion carried.

Resolution #R-22-46

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL
IN SUPPORT OF AN APPLICATION BY CITY OF BREVARD FOR
USDOT RAISE GRANT FUNDING TO CONSTRUCT THE ECUSTA TRAIL IN
TRANSYLVANIA COUNTY**

WHEREAS, the City Council of the City of Hendersonville considers bicycle and pedestrian transportation to be of utmost importance to the region by providing Western North Carolina with recreation and transportation opportunities as well as the possibilities of economic and community development; and

WHEREAS, the City Council of the City of Hendersonville adopted a resolution on April 5, 2012 supporting a regional recreational greenway along the Ecusta rail corridor linking Henderson and Transylvania counties; and

WHEREAS, the United States Department of Transportation has established a Rebuilding American Infrastructure with Sustainability and Equity (RAISE) Grant Program that provides funding for surface transportation infrastructure projects that will have a significant local or regional impact; and

WHEREAS, the City of Brevard will be applying for a RAISE Grant to fund the design and construction of the Ecusta Trail in Transylvania County; and

WHEREAS, the City Council of the City of Hendersonville feels that it is in the best interest of the citizens of Hendersonville to support and endorse said grant application; and

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

1. The City hereby fully supports and endorses an application by City of Brevard for USDOT RAISE grant funding to construct the Ecusta Trail in Transylvania County; and
2. The City hopes that Secretary Pete Buttigieg and the US Department of Transportation will recognize the significance of this project and award funding to enhance the safety and connectivity for residents and visitors to the region.

Adopted by the City Council of the City of Hendersonville, North Carolina this 7th day of April 2022.

/s/Barbara G. Volk, Mayor

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

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

T. Special Event: Thanks to Henderson County Teachers Celebration - Lew Holloway,
Community Development Director

Community Development Director Lew Holloway addressed Council stating the Thanks to Henderson County Teachers Celebration is organized by Joey Moore and sponsored by Skip Sawyer, a State Farm Insurance Agent. Director Holloway stated the event is brand-new and is proposed to take place on the evening Thursday, June 2, 2022, in the 100 block of Main Street with most of the event activities will taking place in the courtyard of the Historic Courthouse. Director Holloway stated the application includes a request for the 100 block of Main Street to be closed to traffic and said the purpose of this event is to be an opportunity for the community to show appreciation for Henderson County Teachers, particularly in light of the pandemic.

Council Member Jerry A. Smith Jr., J.D. moved that City Council approve the special event permit for the Thanks to Henderson County Teachers Celebration on June 2, 2022. A unanimous roll call vote followed. Motion carried.

10. BOARDS/COMMISSIONS/COMMITTEE APPOINTMENTS

A. Asheville Regional Housing Consortium Vacant Seat Appointment – Angela L. Reece, City Clerk

Council Member Lyndsey Simpson moved that City Council appoint City Manager John Connet to serve as the City of Hendersonville representative as a member of the Asheville Regional Housing Consortium. A unanimous roll call vote followed. Motion carried.

B. Pedestrian Plan Steering Committee Approval – Brent Detwiler, City Engineer

City Engineer Brent Detwiler recalled receiving a \$65,000 grant from NCDOT who has hired a consultant, Traffic Planning and Design Inc., which is forming an ad-hoc steering committee to review transportation projects in the area. Mr. Detwiler presented a list of recommended stakeholders which includes staff members and various community group liaisons for consideration. He clarified the committee will be active for 12 months.

Council Member Jerry Smith moved that City Council approve the Pedestrian Plan Steering Committee and membership as presented along with Council member Dr. Jennifer Hensley as liaison. A unanimous roll call vote followed. Motion carried.

Members are as follows:

David White	WNCSource & Apple Transit
Kat Nevel	Sammy Williams Center
Joe Sanders	Blue Ridge Bike Club, AARP, Resident, Friends of Ecusta
Suzanne Hale	Friends of the Oklawaha Greenway
Rebekah Robinson	Conserving Carolina
Diana Lewis	Avid walker and resident; Duncraggen community rep; active volunteer at Sammy Williams
Richard Reagan	Visually impaired pedestrian - 847-612-9095
LoriKay Paden	YMCA
NCDOT Division 14	Steve Williams
Dawn Barr	Avid walker and resident; BRBC president; veterans advocate
Bob Johnson	Planning Board Rep
Adriana Chavela	Hola Carolina
Philip Ellis, MS, PE	Interested citizen, Robinson Design Engineers
Janna Bianculli	County planning board
Dr. Jennifer Hensley	City of Hendersonville Council representative
Carl Taylor	Henderson County Public Schools
Brent Detwiler	City of Hendersonville
Matt Manley	City of Hendersonville
Tom Wooten	City of Hendersonville
Lew Holloway	City of Hendersonville
Brendan Shanahan	City of Hendersonville
Alexius Farris	NCDOT IMD
Rachael Bronson	Traffic Planning & Design
Kristy Carter	Traffic Planning & Design
Christy Staudt	Traffic Planning & Design

11. CITY COUNCIL COMMENTS

Council Member Jerry A. Smith Jr., J.D. announced the City will be celebrating its 175th birthday on May 22, 2022 from 2:00 p.m. to 4:00 p.m. at the Historic Courthouse and invited everyone to attend. There will be additional announcements and press releases.

Council Member Smith asked for an update from staff regarding the Greenville Highway Mixed Use ordinance and Community Development Director Lew Holloway stated staff is continuing to work on this and said different zoning districts have differing height limitations which complicates matters. Council Member Smith stated he would be in favor of changing the height limitation in this district back to 32 feet. Council Member Dr. Jennifer Hensley stated she would like the comprehensive plan process to take course before making any zoning changes. The consensus of Council was to direct staff to prepare a height chart.

Council Member Dr. Jennifer Hensley also expressed gratitude in serving the City and extended thanks and appreciation to fellow Council Members for allowing remote participation.

12. CITY MANAGER REPORT – John F. Connet, City Manager

A. Cash and Investment Report – John Buchanan, Finance Director

City Manager John Connet presented the cash and investment report to Council for consideration.

13. CLOSED SESSION**A. Closed Session – John Connet, City Manager**

At 8:24 p.m. Council Member Jerry A. Smith Jr., J.D. moved that City Council enter into closed session pursuant to NCGS § 143-318.11 (a)(1)(4) and (5) 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 to discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body, including agreement on a tentative list of economic development incentives that may be offered by the public body in negotiations, and 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 (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease. A unanimous roll call vote of the Council followed. Motion carried.

At 9:29 p.m. Council Member Lyndsey Simpson moved that City Council return to open session. A unanimous roll call vote of the Council followed. Motion carried.

13. ADJOURN

There being no further business, the meeting was adjourned at 9:30 p.m. upon unanimous assent of the Council.

Barbara G. Volk, Mayor

ATTEST:

Angela L. Reece, City Clerk



MINUTES

April 21, 2022

SPECIAL CALL MEETING OF THE CITY COUNCIL

CITY OPERATIONS CENTER | 305 WILLIAMS ST. | 10:00 a.m.

Present: Mayor Barbara G. Volk and Council Members: Mayor Pro Tem Lyndsey Simpson, Dr. Jennifer Hensley, Debbie O'Neal-Roundtree, and Jerry A. Smith Jr., J.D.

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

Others Present: Brittany Brady, President, and CEO at Henderson County Partnership for Economic Development, Victoria Todd, Director of Marketing, Henderson County Partnership for Economic Development, Emily Martin, Director of Business Development, Henderson County Partnership for Economic Development, Will Buie, WGLA Engineering, Nathan Kennedy, Truist Bank, Steve Gwaltney, First Citizens Bank, Beau Waddell, Reaben Oil Company, Chip Gould, Cason Companies, Brynn Francis, IMOCO, and Mark Russell, Southern Alarm and Security

1. CALL TO ORDER

Mayor Barbara G. Volk called the meeting to order at 10:00 a.m. and welcomed those in attendance. A quorum was established with all members in attendance.

2. PRESENTATIONS

A. N.C. Gen. Stat. §158-7.1- Public Hearing to Consider the Approval of the Proposed Economic Development Incentives for the Benefit of a Company, known as Project Independence – John Connet, City Manager, Angela S. Beeker, City Attorney

City Manager John Connet addressed City Council and the public regarding available information and said when negotiating economic development with private companies and entities and said it is highly competitive and confidentiality is critical due to the company's suppliers, employees, and competitors. Manager Connet stated we cannot name the company during the negotiating process as the City is in direct competition with other potential sites in the United States. Manager Connet stated if the City is successful in recruiting the company to come to Hendersonville, then there would be an announcement with additional information at the appropriate time. Manager Connet advised everyone this project would bring much needed jobs to the area.

President, and CEO at Henderson County Partnership for Economic Development Brittany Brady addressed City Council regarding the project stating the Project Independence company is a manufacturing company located inside and outside the United States and is requesting an offer of incentives as they are contemplating the acquisition of real property in the City of Hendersonville for the construction of a plant site in the City of Hendersonville. Ms. Brady explained the Company also proposes to purchase real property from the City for the Capital Project by private sale at fair market value, \$1,355,000.00 and said the real property consists of a +/- 21.34 acre parcel and a +/- 0.2 acre parcel, collectively the "Project Site," both parcels being a portion of that real property having a tax REID of 1010646, and both parcels being a portion of that real property shown on that plat recorded on Plat Slide 7333 of the Henderson County Registry. She stated the project would also require water line improvements and possibly relocation. Ms. Brady stated the company would construct a facility and invest \$80 million in real property and \$105 million in business personal property from 2023 to 2027 and said that 117 new jobs would be created between 2025 and 2027 with an average salary exceeding \$52,437 annually. Ms. Brady stated if Council approves the incentives offer and sale of property then the company will then determine which site they wish to locate to and make an announcement at the end of the quarter. Ms. Brady stated the maximum total amount of monetary incentives to be considered by Council for the Project Independence company is \$5,505,000.00 with the first-year estimate of \$26,000.

City Manager John Connet presented additional information on the project to Council discussing the proposed annual incentive payments structure over the next eleven years as follows:

- \$5,505,500 Paid in Annual Incentives Payments (11 Annual Payments, Est.)
- 7 Annual Incentives Payments for Each of the Five Years of Investments Equal to Max of 100% Taxes Paid Assuming Requirements Met Each Year (90% Threshold Required)
- Will Be Paid From General Fund Revenue
- Economic Incentives Agreement will be entered to obligate the company to these terms.

Manager Connet presented a map of the proposed property purchase and made it clear that ballfield and recreation facilities are not part of this transaction but said they will be part of the negotiations with Henderson County School System. Manager Connet stated the ballfield is currently being used by the Hendersonville High School baseball team and said he expects that to continue into the future. Manager Connet stated if the project is successful the City would be responsible for relocating and improving a water line on the property which also coincides with the Water and Sewer Master Plan. Manager Connet stated the estimated cost for relocation and improvement would be approximately \$1.39 million and said grant funding may be available to offset a portion of the cost with the balance being paid from the General Fund and Enterprise Fund. Manager Connet outlined criteria Council must find as follows:

- The “Capital Investment” and “Job Creation” are economic development purposes that would benefit the public by generating additional taxable property and providing well-paid jobs for the City’s citizens, paying a probable hourly wage in excess of \$25.00 per hour thus stimulating the local economy. The proposed wages are in excess of the median average wage in the City.
- The relocation and improvement of the City waterlines running through and along a portion of the Project Site is necessary for the development of the project and is therefore an economic development purpose providing a public benefit.
- The fair market value of Tracts A and B, collectively, with the proposed restrictive on uses is \$1,355,000.

There were no questions.

The City Clerk confirmed this public hearing has been advertised in accordance with North Carolina General statutes. The public hearing was opened at 10:10 a.m.

Mayor Barbara G. Volk announced the comments accepted for this public hearing should only be in relation to this public hearing.

Nathan Kennedy of Truist Bank and resident of Arbutus Lane addressed City Council in support of this project stating if approved, this project would benefit the County for many years to come by adding 117 jobs to the community.

Steve Gwaltney of First Citizens Bank and resident at Toxaway Drive, addressed City Council in support of this project and stressed the benefit of the additional taxable investment coming to the County.

Lynne Williams of Chadwick Ave addressed City Council stating economic development is important to the area asking questions of Council regarding floodplain and tree removal. Ms. Williams expressed concern for the sale of the property and preservation of trees and public space.

City Manager John Connet clarified the property is not in the flood plain and said there is no site plan at this time and clarified 25 acres will remain as a park. City Attorney clarified the City would need to apply to have the parcel removed from the National Register of Historic Places and said the acreage was not a contributing factor but said the ballfield will be preserved and will maintain its national historic designation. Attorney Beeker advised Council the legal noticing requirements were met for this public hearing.

Chip Gould of Cason Companies and resident at Maple Hill Drive addressed City Council in support of this project and commended Council for their efforts to support projects like this to allow residents to remain in the area and create opportunities for our youth to return home and be able to have a job. Mr. Gould stated the project is also an opportunity for the City to gain revenue with not a lot of service requirements.

Beau Waddell of Reaben Oil and resident at Berry Creek Drive, Flat Rock addressed City Council in support of this project stating he appreciates the proposal the company is making stating it will benefit the other businesses in the City keep their taxes low.

Hunter Jones of Hebron Rd. addressed City Council via Zoom electronic software stating he hates to see park land go but said he was in support of the project. Mr. Jones asked if other incentives could be offered for wellness surrounding the site such as trail connectivity to the greenway.

Ken Fitch of Patton St. addressed City Council by Zoom electronic software expressing concerns of the impact to Berkeley Park, Oklawaha Greenway and encouraged awareness of the community value of the project within the city.

There were no further comments.

The public hearing was closed at 10:32 a.m.

City Council Member Dr. Jennifer Hensley moved that City Council approve the Resolution by the City of Hendersonville City Council to Approve Economic Development Incentives for Project Wheel. A unanimous vote of Council followed. Motion carried.

Resolution #R-22-51

RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO APPROVE ECONOMIC DEVELOPMENT INCENTIVES FOR PROJECT INDEPENDENCE

WHEREAS, the City is a municipal corporation having the capacity to contract under N.C. Gen. Stat. §160A-11; and

WHEREAS, Project Independence, hereinafter the “Company,” is a corporation authorized to do business in North Carolina, having the capacity to contract; and

WHEREAS, the Company has been considering constructing an industrial facility in Henderson County, which if it occurs is estimated by the Company to result in a taxable capital investment to be made by or on behalf of the Company of at least one hundred eighty-five million dollars (\$185,000,000.00) in improvements to real property and in personal property, to be made over a period of five (5) years, and the creation of not fewer than one hundred seventeen (117) new jobs, paying an average wage in excess of the current average weekly wage for jobs in Henderson County; and

WHEREAS, Company has identified a project site consisting of +/- 21.34 acres, the +/- 21.34 acres hereinafter referred to as “Project Site,” being a portion of that real property, owned by the City, having a REID of 1010646, the entire property having been acquired by the City by that deed recorded in Deed Book 1363 at Page 221 of the Henderson County Registry, the entire property owned by the City as described in Deed Book 1363 at Page 221 hereinafter referred to as the “City Property,” the boundary of the Project Site being shown as Tract A on that Survey attached hereto as Exhibit 1, and incorporated by reference; and

WHEREAS, the Company needs an additional 0.2 acre parcel, also being a portion of the City Property, for purposes of combining it into the Project Site to provide for site development road construction within the Project Site, said 0.2 acre parcel being identified as Tract B on Exhibit 1 attached hereto and incorporated herein by reference (Tract B will hereinafter be referred to as “Tract B”); and

WHEREAS, the Company proposes to purchase the Project Site and Tract B from the City at fair market value, and will construct or cause to be constructed and equip the facilities necessary for operations in Henderson County and the City of Hendersonville; and

WHEREAS, the City has received two appraisals for the Project Site which places the fair market value of the Project Site as being between \$1,293,647.00 and \$1,355,000.00, and the City, through its City Council, has therefore determined that \$1,355,000.00 is the fair market value for both the Project Site and Tract B combined; and

WHEREAS, the Company has stated that the City is competing with one or more other sites for the location of the capital investment within the United States; and

WHEREAS, the Company requested assistance from the City in the form of economic development incentives to offset a portion of the costs associated with construction and equipping of the facilities necessary

for operations in Henderson County and the City, and for assistance in relocating City-owned water lines currently running through a portion of the proposed Project Site; and

WHEREAS, in reliance upon the Company's representations to the City concerning the net taxable capital investment to be made and jobs to be created, the City set and held a public hearing on April 21, 2022 at 10:00 am, said public hearing having been duly advertised in the Hendersonville Times News, a newspaper having daily general circulation in Henderson County, to hear public comment regarding the City's intent to consider selling the Project Site and Tract B to the Company by private sale at fair market value and the City's intent to consider granting economic development incentives to the Company in a total amount not to exceed five million five hundred five thousand five hundred dollars (\$5,505,500.00), and to consider the City's relocation of City-owned waterlines; and

WHEREAS, the City has the authority under N.C. Gen. Stat. §158-7.1(a) and (b) to make appropriations, including grants to a company to offset a portion of the expenses associated with the construction of manufacturing facilities, and to provide for the relocation of and improvements waterlines made necessary by the proposed economic development project in order to stimulate the local economy, promote business, create new jobs, and benefit the public by generating additional tax revenue for the City; and

WHEREAS, the City has the authority under N.C. Gen. Stat. §158-7.1(d) to sell, by private sale, interests in real property for economic development purposes.

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

1. The City Council finds that the capital investment and creation of new jobs described above by the Company is an economic development purpose that would benefit the public in Henderson County.
2. The City Council finds that a taxable capital investment of one hundred eighty-five million dollars (\$185,000,000.00), to be made over a period of five (5) years, is an economic development purpose that will benefit the City by generating additional taxable capital property, real and personal, and provide well-paid jobs with benefits for the City's citizens, paying a probable average hourly wage in excess of \$25.00 per hour, thus stimulating the local economy.
3. The City Council finds that the relocation and improvement of City waterlines currently running through and along a portion of the Project Site is necessary for the development of the project.
4. The City Council finds that the public interest to be derived as a result of the Project Independence construction and equipping of an industrial facility in the City of Hendersonville is the creation of jobs paying above the median average wage in the City, and a substantial increase in taxable capital property that will generate additional property tax revenues for the City.
5. The following incentives package is hereby approved by the City Council for Project Independence:
 - a. The Company will make a taxable capital investment over a five-year period (anticipated to be 2023, 2024, 2025, 2026 and 2027) consisting of at least \$80,000,000.00 in real property (not including land acquisition costs), and at least \$105,000,000.00 in business personal property and equipment, for total taxable capital investment of \$185,000,000.00.
 - b. The Company will create a minimum of 117 new jobs over a two-year period (anticipated to be 2026-2027) paying an average annual wage exceeding \$52,437.00, which is in excess of the median wage in Henderson County for full-time employment, plus health and other benefits.
 - c. For each of the five years over which the taxable capital investment is made and retained (excluding allowable depreciation on the business personal property) to at least 90%, a total of seven annual incentives payments will be made to the Company, assuming the taxable capital investment and job creation benchmarks (as applicable) are met to at least 90% of the stated benchmarks for each of the seven years. The annual payments will equal 90-100% of the ad valorem taxes paid, depending on the percentage of the benchmark attained. The maximum total of annual incentives payments that the Company may qualify for is \$5,505,500.00. An estimated schedule of the taxable capital investment to be made by Project Independence and annual incentives payments to be made by the City is as attached hereto as Exhibit 2. The annual incentives payments will be funded from the general property tax revenues of the City.
 - d. The City will sell the Project Site and Tract B, together, to the Company for the fair market value price of \$1,355,000.00. The tracts will be conveyed subject to restrictions that limit the use of both tracts to industrial, manufacturing, warehouse and/or distribution center uses, open space, and for public parks and recreational purposes, including but not limited to public educational team sports. The Mayor, City Manager, City Attorney, City Clerk, and City Finance Director are all authorized to sign all documents necessary to carry out this sale,

e. The City will relocate the City's waterline currently crossing the Project Site, at the City's expense, to be paid from general property tax revenue, water and sewer enterprise funds, and public or private grant funds (if received). The estimated maximum cost (at this time) for the waterline relocation is \$1,390,000.00.

6. The City Manager is authorized to execute an economic incentives agreement on behalf of the City of Hendersonville with the Company, with such terms and conditions as he deems appropriate in consultation with the City Attorney, provided the agreement is consistent with the terms of this Resolution. The City Manager, City Attorney, City Clerk, and City Finance Director are also authorized to take any other actions and enter into any other agreements on behalf of the City with the Company, or with any other entity, necessary to carry out the City's responsibilities under the economic incentives agreement, except where City Council approval is required by the NC General Statutes or by a grant funding entity, regardless of any local policies or guidelines, and provided such actions are within funds budgeted by City Council through the adoption of any ordinance to adopt any of the following: general fund budget, enterprise fund budgets, grant projects, and capital projects, including but not limited to relocation of the City's waterline as contemplated herein.

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

[illegible]

ANNUAL AND TOTAL REQUIRED CAPITAL INVESTMENT AND ESTIMATED INCENTIVES									
Year (Calendar Year/Tax Year)	Required Taxable Capital Investments\$	Required Total Taxable Capital Investment and Retention	Required Total Job Creation and Retention\$	Estimated Year 1 Incentives if Year 1 Requirements Are Met#	Estimated Year 2 Incentives if Year 2 Requirements Are Met#	Estimated Year 3 Incentives if Year 3 Requirements Are Met#	Estimated Year 4 Incentives if Year 4 Requirements Are Met#	Estimated Year 5 Incentives if Year 5 Requirements Are Met#	Total Estimated Incentives if All Requirements Are Met
Year 1(2023)	\$5,000,000.00 (RP) \$0.00 (PP)	\$5,000,000.00 (RP) \$0.00 (PP) \$5,000,000 (T)	0	\$26,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$26,000.00
Year 2 (2024)*	\$25,000,000.00 (RP) \$0.00 (PP)	\$30,000,000.00 (RP) \$0.00(PP) \$30,000,000.00 (T)	0	\$26,000.00	\$130,000.00	\$0.00	\$0.00	\$0.00	\$156,000.00
Year 3 (2025)	\$40,000,000.00 (RP) \$25,000,000.00 (PP) Retentions\$	\$70,000,000.00 (RP) \$25,000,000.00 (PP) \$95,000,000.00 (T)	0	\$26,000.00	\$130,000.00	\$338,000.00	\$0.00	\$0.00	\$494,000.00
Year 4 (2026)	\$10,000,000.00 (RP) \$10,000,000.00 (PP) Retention \$	\$80,000,000.00 (RP) \$32,321,428.57 (PP) \$112,321,428.57 (T)	46 created 46 (T)	\$26,000.00	\$130,000.00	\$324,071.43	\$104,000.00	\$0.00	\$584,071.43
Year 5 (2027)	\$0.00 (RP) \$70,000,000.00 (PP) Retention \$	\$80,000,000.00 (RP) \$98,571,428.57 (PP) \$178,571,428.57 (T)	71 created 46 retained\$ 117 (T)	\$26,000.00	\$130,000.00	\$310,142.86	\$98,428.57	\$364,000.00	\$928,571.43
Year 6 (2028)	Retention \$	\$80,000,000.00 (RP) \$87,321,428.57 (PP) \$167,321,428.57 (T)	117 retained\$ 117 (T)	\$26,000.00	\$130,000.00	\$296,214.29	\$92,857.14	\$325,000.00	\$870,071.43
Year 7 (2029)	Retention \$	\$80,000,000.00 (RP) \$76,071,428.57 (PP) \$156,071,428.57 (T)	117 retained\$ 117 (T)	\$26,000.00	\$130,000.00	\$282,285.71	\$87,285.71	\$286,000.00	\$811,571.43
Year 8 (2030)	Retention \$	\$80,000,000.00 (RP) \$64,821,428.57 (PP) \$144,821,428.57 (T)	117 retained\$ 117 (T)	\$0.00	\$130,000.00	\$268,357.14	\$81,714.29	\$247,000.00	\$727,071.43

ANNUAL AND TOTAL REQUIRED CAPITAL INVESTMENT AND ESTIMATED INCENTIVES									
Year (Calendar Year/Tax Year)	Required Taxable Capital Investments\$	Required Total Taxable Capital Investment and Retention	Required Total Job Creation and Retention\$	Estimated Year 1 Incentives if Year 1 Requirements Are Met#	Estimated Year 2 Incentives if Year 2 Requirements Are Met#	Estimated Year 3 Incentives if Year 3 Requirements Are Met#	Estimated Year 4 Incentives if Year 4 Requirements Are Met#	Estimated Year 5 Incentives if Year 5 Requirements Are Met#	Total Estimated Incentives if All Requirements Are Met
Year 9 (2031)	Retention \$	\$80,000,000.00 (RP) \$53,571,428.57 (PP) \$133,571,428.57 (T)	117 retained\$ 117 (T)	\$0.00	\$0.00	\$254,428.57	\$76,142.86	\$208,000.00	\$538,571.43
Year 10 (2032)	Retention \$	\$80,000,000.00 (RP) \$42,321,428.57 (PP) \$122,321,428.57 (T)	117 retained\$ 117 (T)	\$0.00	\$0.00	\$0.00	\$70,571.43	\$169,000.00	\$239,571.43
Year 11 (2033)	Retention \$	\$80,000,000.00 (RP) \$33,750,000.00 (PP) \$113,750,000.00 (T)	117 retained\$ 117 (T)	\$0.00	\$0.00	\$0.00	\$0.00	\$130,000.00	\$130,000.00
TOTAL				\$182,000.00	\$910,000.00	\$2,073,500.00	\$611,000.00	\$1,729,000.00	\$5,505,500.00

4. ADJOURN

There being no further discussion, the meeting was adjourned at 10:33 a.m. upon unanimous assent of the Council.

Barbara G. Volk, Mayor

ATTEST:

Angela L. Reece, City Clerk



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: Jennifer Harrell

MEETING DATE: May 5, 2022

AGENDA SECTION: CONSENT

DEPARTMENT: Human Resources

TITLE OF ITEM: Revision of the Inclement Weather Policy – *Jennifer Harrell, HR Director*

SUGGESTED MOTION(S):

I move City Council adopt the Inclement Weather Policy as presented.

SUMMARY:


Staff has reviewed the Inclement Weather Policy and made revisions to further clarify how employees will be paid during weather closures.

BUDGET IMPACT: \$0.00

Is this expenditure approved in the current fiscal year budget?

If no, describe how it will be funded.

ATTACHMENTS: Inclement Weather Policy

	CITY OF HENDERSONVILLE			Section 5, Item B.
Policy Name:	Inclement Weather Policy	Date Adopted by Council :	May 5,2022	

I. Introduction

The City of Hendersonville is required to provide essential services for its citizens regardless of weather conditions. The City is committed to the safety and security of its employees, and visitors.

As such, the decision whether the City should close or remain open is based on the overall concern for the community. The Inclement Weather Policy is established to be as fair as possible to all employees.

II. Scope

This administrative policy, upon approval of the City Council, shall be applicable to all employees. This procedure shall remain in effect until such time that it is altered, modified, or rescinded by the City Council.

III. Types of Personnel


Essential Personnel

The term “essential personnel” is used in this policy to describe those employees whose job responsibilities are provided 24 hours a day – seven days a week and / or essential to the everyday livelihood of the city and its citizens. Employees essential to the successful and efficient management of a weather emergency situation shall be designated by the City Manager or their Department Head and are expected to return to work as scheduled.

An essential employee, unable to report to work for their scheduled shift due to legitimate environmental conditions, should contact their immediate supervisor to see if alternative transportation can be arranged. An employee who reports on their day off to cover the absent employee’s shift will be paid in accordance with the FLSA guidelines. Failure to be available or to report to work when called may be grounds for disciplinary action.

Non-Essential Personnel

The term “non-essential ~~personnel-employee~~” is used in this policy to describe those employees whose job responsibilities are primarily administrative in nature and can be delayed without any negative impact to the employees, citizens, or community.

	<p style="text-align: center;">CITY OF HENDERSONVILLE</p>			<p style="text-align: center;">Section 5, Item B.</p>
Policy Name:	Inclement Weather Policy	Date Adopted by Council :	May 5,2022	

IV. Procedure

It is the policy of the City of Hendersonville to remain open during most periods of inclement weather; however, where extraordinary circumstances warrant the City reserves the right to close our facilities.


1. Each employee is expected to make necessary advance preparations so they can get to work in periods of adverse weather.
2. The City recognizes weather conditions may prevent some employees from reporting to work on time or not at all. The decision to report to work or not is an employee's option based on their assessment of road conditions. If an employee does not report to work, reports to work late, or leaves early due to weather they must notify their immediate supervisor.
3. The employee may use vacation, compensatory time, or leave without pay as coordinated with their supervisor during adverse weather.
4. Employees are strongly encouraged to have a plan in place for childcare in the event that schools are closed due to inclement weather. Department Heads may exercise discretion in allowing employees to stay home for purposes of caring for school age children, as long as full operational capabilities are maintained.

City offices and departments shall remain open for the full scheduled working day unless authorization for closing or other deviation is approved by the City Manager. In these situations, the City may be closed or may open late for employees, customers, and the general public in the interest of safety.

The City of Hendersonville will notify local media of this change and post on the City's website...~~and update our general information line at 828-697-3000. Employees will be notified via City communication systems, but it is the Department Heads' ultimate responsibility will be contacted and are responsible~~ for contacting their employees.

V. Closures and Payroll Procedures


~~If the City does close, this City Closures~~ will be the City Manager's decision. In the event of a closure due to weather conditions the City will apply the following standard:

	<p style="text-align: center;">CITY OF HENDERSONVILLE</p>			<p style="text-align: center;">Section 5, Item B.</p>
Policy Name:	Inclement Weather Policy	Date Adopted by Council :	May 5,2022	

- Non-Essential and essential employees will be paid for the closure. Additionally, essential ~~and non-essential employees required to work~~ ~~employees~~ will receive pay for the hours worked during the closure which would be granted as either compensatory time “comp time” as regular time or paid regular hours. ~~Hours paid for the closure would be considered non-compensable hours under FLSA for overtime calculations. For example, the City closes its operations for a half a day. Non-Essential and essential employees will receive a half day pay for the closure. Additionally, essential and non-essential employees required to work would receive pay for hours worked during the closure which would be granted as either comp time as regular time or paid regular hours. Hours paid for the closure would be considered non-compensable hours under FLSA for overtime calculations.~~
- If the employee elects not to report to work when facilities are open the employee can elect 1) to use any accrued vacation leave or compensatory time or 2) the employee will not be paid for the day.
- ~~If an employee can work from home this~~ Remote work must be authorized by the employee’s department head or City Manager. ~~This time will be counted as regular working hours.~~ The employee will be compensated as those non-essential employees above.
- ~~All employees will be given the same amount of time for the closure. For instance, an employee works a second or third shift they will receive the same amount of time if they work during a closure. This time is only good for day of closure till midnight.~~
- ~~If the~~ Employees ~~is~~ preapproved for a scheduled off day ~~would not be eligible for pay under this policy. This includes either sick, or~~ vacation, paid family leave, etc.
- Temporary or Auxiliary employees are not eligible.

VI. Non-Compensable Stand-By Pay

Employees may volunteer or be asked to have their name placed on a “call-in” list as relief personnel. Employees in this status are not eligible for “on-call” pay outlined in the City’s Personnel Policy in Article III Section 13 of the City’s personnel policy. These employees are not required to be available, and no disciplinary action will be taken for failure to respond. However, should these employees report to work during their day off or work hours in addition to their regular schedule, they will be paid in accordance with FLSA guidelines.

	<p align="center">CITY OF HENDERSONVILLE</p>			<p align="center"><i>Section 5, Item B.</i></p>
<p>Policy Name:</p>	<p>Inclement Weather Policy</p>	<p>Date Adopted by Council :</p>	<p>May 5,2022</p>	

This policy is approved by City Council in accordance with City’s Personnel Policy.



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: Jennifer Harrell

MEETING DATE: May 5, 2022

AGENDA SECTION: CONSENT

DEPARTMENT: Human Resources

TITLE OF ITEM: Revision of the Travel Policy – *Jennifer Harrell, HR Director*

SUGGESTED MOTION(S):

I move City Council adopt the Travel Policy as presented.

SUMMARY:


The Travel Policy limits employees that travel for conferences, trainings, etc. for only their current position. Staff recommends adding travel for current position or their next level position. Clarification is made when a City Purchasing card may be used.

BUDGET IMPACT: \$0.00

Is this expenditure approved in the current fiscal year budget?

If no, describe how it will be funded.

ATTACHMENTS: Travel Policy

	<p style="text-align: center;">CITY OF HENDERSONVILLE</p>			<p style="text-align: center;">Section 5, Item C.</p>
Policy Name:	Travel Policy	Date Adopted by Council :	May 05,2022	

I. Purpose

It is the policy of the City to authorize employees, elected officials, and appointed officials to conduct City business and to establish procedures for reimbursement of the costs associated with travel. Employees, elected officials, and appointed officials are encouraged to attend trainings, conferences, and meetings of professional associations.

II. Applicability

1. All employees that are required to be away from the City in order to engage in an environment pursuant and relevant to their current position **or their next level position.**
2. All elected officials that are required to be away from the City in order to engage in an environment pursuant and relevant to their current position **or their next level position.**
3. All appointed officials that are required to be away from the City in order to engage in an environment pursuant and relevant to their current position **or their next level position.**

III. General Policy

Training shall be defined as those conferences or sessions that provide certification or a learning environment for employees, elected officials, and appointed officials pursuant and relevant to their current City position **or their next level position.**


It shall be the general policy of the City to allow employees and officials to travel to training sessions, seminars, and meetings of professional associations under the guidelines specified in this policy. Service by Council members in an official capacity as representatives of the City on state or regional committees and boards is encouraged and their travel expenses will be reimbursed.

All travel and reimbursement ~~is~~ **are** contingent upon the availability of funds in the proper budget account and no travel or reimbursement will be permitted without the employee completing a Travel Authorization, Per Diem, and Expense Reimbursement Form, referred to as the Travel Form for the remainder of this policy.

Abuse of this policy is subject to disciplinary action up to and including termination.

IV. Employee and City Official Responsibility

An employee or official on City business is expected to exercise the same care in incurring expenses that a sensible person would exercise if traveling on personal business and spending

	CITY OF HENDERSONVILLE			Section 5, Item C.
Policy Name:	Travel Policy	Date Adopted by Council :	May 05,2022	

personal funds. The following conduct is discouraged and may result in the denial of travel authorization and reimbursement in the future:

- Excess costs
- Circuitous routes
- Luxury accommodations
- Unnecessary and unjustified additional services

V. Approval Authority

The responsibility for keeping within the travel budget of each activity lies with the approving authority. The authorization of all travel is as follows:


1. The Mayor shall authorize the City Manager's travel and training requests.
2. City Council shall authorize the elected officials training and travel requests. City Council shall authorize the out-of-state travel requests of Council members. Travel expenses incurred as a City representative of a statewide regional committee, to attend a convention, or to attend a training directly related to the role of the City Council member will be reimbursed without City Council approval.
3. The City Manager or their designee shall authorize travel and training by the department heads and appointed officials. This shall also include the reimbursement of transportation expenses of individuals visiting for employment interviews.
4. The department head or their designee shall authorize travel and training by employees within their department.

VI. Procedure

All travel and training should be authorized in advance. Only those expenses allowed by this policy will be paid for by the City.

General Procedure

1. Requests for travel should be submitted to the authorizing party in advance of all travel. The authorizing party will review all documents to ensure all travel expenditures are documented, substantiated, are allowed by this policy and are within available budget.
2. All expenditures related to each travel event should be included on the Travel Form. This includes deposits or other costs incurred in advance on a City Purchasing Card.
3. Travel Forms should be submitted to the Finance department for processing no later than Wednesday of the week prior to travel.

	<p style="text-align: center;">CITY OF HENDERSONVILLE</p>			<div>Section 5, Item C.</div>
Policy Name:	Travel Policy	Date Adopted by Council :	May 05,2022	

VII. Reimbursable Expenses Guidelines


A. Personal Vehicles

Personal vehicles should only be used if a City vehicle is not available, not applicable, or not economical and practical. Use of a personal vehicle must be approved in advance by the department head with written justification on the Travel Form. Employees who choose to use a personal vehicle when a City vehicle is available, applicable, or economical and practical, will be reimbursed at one half of the current IRS standard mileage rate. If a city vehicle is not available, the requesting party may use a personal automobile and be reimbursed at the current IRS standard mileage rate. The IRS standard business mileage rate is updated annually at www.irs.gov . If more than one employee is attending the same event, carpooling is mandatory even if a personal vehicle is being used, unless the authorizing party determines that it is not economical or practical. When a group of employees or officials are traveling together to the same destination, only one traveler will receive reimbursement.

No reimbursement will be made for expenses incurred in making repairs or towing a personal vehicle.

B. City Vehicles

City vehicles should be used whenever possible for any authorized travel. The employee requesting the City vehicle must sign a check-out form before travel and sign the form when the vehicle is being returned after travel. The requesting party must obey all laws of the jurisdiction in which the automobile is being operated. The City will not reimburse any expenditures related to any law enforcement fines or fees incurred traveling on City business. The City vehicle will be used for City business and activities only. Non-City employees will not be allowed to ride in City vehicles. ~~Reimbursement will be made for repairs, gasoline, oil, parking, toll fees, and other unavoidable expenses of the City vehicle. A paid receipt must be included to support all reimbursement requests. Fuel for City vehicles should be purchased with the City Fleet fuel card.~~ A City Purchasing Card may not be used unless there is an emergency. ~~In the event the city vehicle breaks down and repairs are required or a rental car is required to complete the authorized travel, the City Purchasing Card is permissible to use. The employee's immediate supervisor shall be notified at the earliest possible time. In the event a Purchasing Card was not distributed to the employee, reimbursement will be made for repairs, gasoline, oil, parking, toll fees, and other unavoidable expenses of the City vehicle. A paid receipt must be included to support all reimbursement requests. Fuel for City vehicles should be purchased with the City Fleet fuel card.~~ Any employee or official operating a city vehicle should use the same care that a sensible person would use if operating his or her own personal vehicle. ~~It is recommended that the employee attending training/conference or one employee from the group attending training request a temporary P-card from the Finance department prior to traveling to the training/conference.~~

	CITY OF HENDERSONVILLE			Section 5, Item C.
Policy Name:	Travel Policy	Date Adopted by Council :	May 05,2022	

C. Rental Vehicles

A rental vehicle may be used when it is determined that no other transportation is cost-effective, practical, or possible. A rental vehicle will be used for City business and activities only. Use of a rental vehicle must be approved in advance on the Travel Form. Additional vehicle rental expenses incurred while on City business may also be reimbursed upon completion of the trip with the proper documentation on a supplemental Travel Form for reimbursement. City employees and officials are covered under City insurance when renting a vehicle. Additional insurance is not needed and will not be reimbursed.

D. Airfare

Generally, the lowest priced coach class airfare should be purchased. Other classes may be approved if additional documentation is provided detailing better rate, lack of availability, or necessity because of disability or other special need.

Air travel should be paid for with a City Purchasing Card. Airfare purchased with personal funds will not be reimbursed until after travel is completed. Airfare purchased with “miles” or “points” will not be reimbursed.

One checked bag is approved per City-authorized traveler unless excess fees are due to a valid business purpose.

Travel to the airport is reimbursable and should be the most practical and economical method available. Personal vehicle travel to the airport will be reimbursed at the IRS standard business mileage rate at the time plus parking.


If parking at the airport, only the economy lots are approved for reimbursement.

E. Other Transportation

All necessary air, bus, taxi, train, or similar transportation must be obtained at the most cost-effective rate available for the economic benefit of the City. Reimbursements will be made for actual costs that are incurred and receipt supported with the completion of a supplemental Travel Form.

F. Accommodations

The City will not pay for out of town accommodations for travel within a 60 mile radius of City Hall unless approved by the City Manager or their designee. Lodging costs in the host city may be claimed from the night before the authorized event starts through the night before it ends, unless timely return transportation is not possible, thereby necessitating additional lodging costs. Employees must provide documentation as to the purpose of being away from the City for the business benefit of the City for every day that travel is being requested. Going to an event earlier than necessary or staying later than necessary will not be paid for by the

	CITY OF HENDERSONVILLE			Section 5, Item C.
Policy Name:	Travel Policy	Date Adopted by Council :	May 05,2022	

City. Accommodations costs will be reimbursed at the actual amount incurred. Reservation confirmation for accommodations must be submitted with the Travel Form in advance of travel, including reservations made with a City Purchasing Card. Employees and officials are limited to reserving the most cost-effective accommodations that will permit the employee or official to conduct his or her City business. Special government rates should be obtained if available.

City employees and officials are responsible for any no-show fee incurred unless an emergency or other department head approved business reason causes the cancellation. Employees should always obtain a cancellation number from the accommodations entity to protect against no-show billings. Funds prepaid by the City, which relate to canceled arrangements, must be refunded to the City by the employee or official.

No room incidentals are to be paid for by the City or charged to a City Purchasing Card. Miscellaneous expenses are not considered part of a per diem reimbursement; therefore, substantiation is required. The City will require actual receipts or written certification as substantiation. Miscellaneous expenses include cab fares outside of travel to and from the event site, fax, telephone, copy charges, and other business related expenses. Any expense not in line with this policy will be paid for by the employee. ~~In the event that~~ If any unauthorized travel charge is incurred on a City Purchasing Card, the City may deduct the expense from the employee's next payroll check.

G. Meals


Per Diem

Employees and officials traveling on overnight City business may receive a per diem for meals for travel according to the following schedule:

- Breakfast – Depart prior to 6:00 a.m.
- Lunch – Depart prior to 10:00 a.m. (day of departure) or return after 2:00 p.m. (day of return)
- Dinner – Return after 8:00 p.m. If stopping for dinner would cause the employee or official to return after 8:00 p.m. when the employee or official would have otherwise returned prior to 8:00 p.m., dinner will not be reimbursed.

Per Diem*	Breakfast	Lunch	Dinner	Total
	\$14	\$16	\$30	\$60

If a meal is included as part of a registration fee for an event paid requiring overnight travel, a deduction from the per diem will be made accordingly. Employees and officials will receive

	CITY OF HENDERSONVILLE			Section 5, Item C.
Policy Name:	Travel Policy	Date Adopted by Council :	May 05,2022	

a per diem or reimbursement for breakfast if no hotel continental breakfast is included in their hotel registration or if they choose to eat breakfast elsewhere.

If travel is unexpectedly extended, the traveler must submit a new per diem request for approval upon return and will be reimbursed at the per diem rate.

H. Other Travel Expenses

Any phone charges, unless previously authorized or fully-detailed and business related, are not permissible for reimbursement.

In-room movies or entertainment that are billed to the employee's or official's room that have no relation to the legitimate nature of the business travel are the responsibility of the traveler and will not be reimbursed by the City.

Parking fees and tolls will be reimbursed with proper documentation and receipts. These expenses should be included under "Other" on the Travel Form.

Gratuities paid for luggage handling at hotels, airports, or other similar areas will be reimbursed at a reasonable and customary rate.

Tips, vending machine purchases, and other similar expenses are included in the per diem meal allowance and will not be reimbursed by the City.

Reimbursement for purchases paid by the traveler with their own funds, or their personal debit or credit card, will not be reimbursed until travel is complete.

VIII. Vacation, Familial Travel, or Traveling with Other Employees and Officials

A. Combining Business and Vacation


If an employee wishes to combine a City business-related trip with a personal vacation, the department head must approve the arrangement in advance. The City will only reimburse the portion of the trip that was for City business and activities.

The traveler must clearly detail and provide documentation of which expenses will be for the business portion of travel. The employee must specify the dates of the City business or activities and the total days of the trip in order to document work hours.

Great care must be exercised to ensure that the traveler does not, in appearance or fact, have personal gain at the expense of the City.

Any discounts received due to extended or combined travel, such as free days, discounted rates, etc., must be applied to the business portion of the travel.

It is the responsibility of the approving authority to ensure travel combining business and vacation meets all requirements of this policy.

	<p align="center">CITY OF HENDERSONVILLE</p>			Section 5, Item C.
Policy Name:	Travel Policy	Date Adopted by Council :	May 05,2022	

B. Travel with Spouse or Family

Spouses and family members may accompany an employee or official on City business-related trips. However, the City provides reimbursement only for the employee's or official's expenses. Spouses and family members are not allowed to travel in City vehicles. Any additional expenses that the employee or official would not incur if traveling alone will not be reimbursed. Employees are required to put all expenses that are incurred due to spouse and family travel on a personal debit or credit card and they will be reimbursed only for their portion of the business-related costs upon return from travel. Employees must provide documentation of costs associated with single-person travel and documentation of actual costs incurred. No purchase is to be put on the employee's City Purchasing Card that is over what the City would pay for a single employee traveling.


C. Travel with Someone from Another Organization

If an employee travels with someone from another organization in a vehicle owned by that person or his or her employer, and if he or she shares the cost of the trip, he or she can receive reimbursement for their share only if proper documentation and receipts are submitted. This method must be approved by the proper approval authority. A waiver may be required. Employees are reminded that City insurance provides less coverage for City employees not traveling in City vehicles. More detailed information can be found on the North Carolina League of Municipalities website or in the Human Resources Department.

IX. Travel Expense Report

The Travel Form must be used regardless of the employee's intention to be reimbursed for payments or not. All expenditures related to each travel event, including any expenditures for travel paid for in advance on a City Purchasing Card must be detailed and documented on a Travel Form. Travel Forms should be completed prior to travel. However, employees may submit supplemental expense reports for any additional costs incurred to be reimbursed no later than ten working days after return from the trip. Expense report accommodations receipts must reflect no more than single accommodation rates for employees and officials. Employees who travel with non-City employees must also provide documentation for what was paid during the business portion of the travel. The employee will complete the expense report and attach original bills and or receipts to support the following expenditures:

- Accommodations
- Transportation Costs
- Registration Fees (a brochure, agenda or program from the event detailing all days included in the event)

	CITY OF HENDERSONVILLE			Section 5, Item C.
Policy Name:	Travel Policy	Date Adopted by Council :	May 05,2022	

- Car Rental Fees (when applicable)
 - City Vehicle Expenditures (repairs, gas, oil, parking, tolls, etc.)
- A. Approval and Processing of Travel Expense Reports

Reimbursement requests must be submitted to the department head for approval in advance of travel. After approval by the department head, the Travel Form will be forwarded to the Finance Department in advance of travel.

The Finance Department will determine that the reimbursement form has been properly approved, that it is mathematically correct, and that expenses agree with submitted documentation and receipts and are within limits set by this policy. If an error is found in the reimbursement request, the requesting party will be informed and the error will be corrected before payment is made. Any expenses found to not be in line with this policy will be paid for by the employee.

Before the reimbursement is made, the Finance Department will determine that an amount sufficient to pay the request has been accounted for or that there is a sufficient unexpended appropriation in the expenditure line item.

An employee submitting a falsified Travel Form knowingly will be subject to disciplinary action up to and including termination. A department head who approves a Travel Form which is known to be falsified will be subject to disciplinary action up to and including termination.

X. Travel Policy Revisions

The City Manager is authorized to make future revisions to this policy, including an adjustment to the per diem rate for meals while traveling, mileage reimbursements, and other monetary matters. It is understood that any substantive changes to the Travel Policy should only be implemented after first consulting with the City Council.

Administrative Procedure

Office of the City Manager

Meal Reimbursements/P-cards

Meals resulting from City business purposes, excluding overnight travel, are eligible to be reimbursed, with a receipt detailing the purchase. Additionally, City issued purchasing cards (P-cards) may be used to purchase meals resulting from City business purposes. All meal purchases relating to City business purposes require prior approval from the City Manager or their designee. Those meal purchases or reimbursements should be no greater than the appropriate amount detailed in the per diem schedule in the Travel Policy. Any expense not in line with this policy will be paid by the employee. No receipts including the purchase of alcohol will be eligible for reimbursement. Purchases and reimbursements must contain documentation of the prior approval and the City business purpose.

Meals may be reimbursed for non-employee professionals as a guest in the role of instructor or mentor for a one-time occurrence at the discretion of the City Manager or their designee. The amount shall not exceed one and a half times the per diem rate amount for the meal. No alcohol purchases will be reimbursed at any time for any circumstances.



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER:	Lew Holloway, Community Development Director	MEETING DATE: May 5, 2022
AGENDA SECTION:	CONSENT AGENDA	DEPARTMENT: Community Development
TITLE OF ITEM:	Special Event: Hendersonville's 175 th Birthday Party- <i>Lew Holloway, Community Development Director</i>	

SUGGESTED MOTION(S):

I move that City Council approve the special event permit for Hendersonville's 175th Birthday Party.

SUMMARY:

The City of Hendersonville is celebrating its 175th anniversary – and what better way to celebrate than a birthday party? Sponsored and organized by the City and Friends of Downtown Hendersonville, this event will be held on Sunday, May 22, 2022, from 2-4 p.m. at the Historic Courthouse on Main Street. The event requests the closure of the 100 block of Main Street for the duration of the event, including set up and breakdown. City departments and local organizations will set up booths and offer activities highlighting the history and people that have contributed to the City of Four Seasons. This is part of a yearlong promotion to celebrate Hendersonville's history. The event is open to the public. The Special Events Committee unanimously voted to recommend approval of this event as presented.

BUDGET IMPACT: NA

Is this expenditure approved in the current fiscal year budget? NA

If no, describe how it will be funded.

ATTACHMENTS:

None



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER:	Lew Holloway, Community Development Director	MEETING DATE: May 5, 2022
AGENDA SECTION:	CONSENT AGENDA	DEPARTMENT: Community Development
TITLE OF ITEM:	Special Event: July Fourth Festival and Fireworks - <i>Lew Holloway, Community Development Director</i>	

SUGGESTED MOTION(S):

I move that City Council approve the special event permit for July Fourth Festival and Fireworks.

SUMMARY:

Sponsored and organized by the Tourism Development Authority and Henderson County Parks and Recreation, this event will be held on Monday, July 4, 2022, from 5-10 p.m. on Main Street. The event is proposed to be the same as in 2021 except for a request to close one additional block, making the total closure 5 blocks of Main Street (Caswell to Third Ave). The organizers report that the 2021 crowd size and event layout was too congested, justifying the need for an additional block. The event includes inflatable bounce houses, games, food trucks, and live music at the Historic Courthouse. Fireworks will kick off at 9 p.m. in the same capacity and using the same contractor as in previous years. Earlier in the day the annual July Fourth Parade will take place on Main Street (organized by the Hendersonville Merchants and Business Association). The Special Events Committee unanimously voted to recommend approval of this event as presented.

BUDGET IMPACT: NA

Is this expenditure approved in the current fiscal year budget? NA

If no, describe how it will be funded.

ATTACHMENTS:

None



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: Adam Murr **MEETING DATE:** 05/05/2022

AGENDA SECTION: CONSENT **DEPARTMENT:** Administration

TITLE OF ITEM: May 2022 Budget Amendments – *Adam Murr, Budget Manager*

SUGGESTED MOTION(S):

I move City Council adopt budget amendment(s) 05052022-02, and 05052022-03 as presented.

SUMMARY:

Amendment 05052022-02 increases the grant project fund (301) by \$250,000 to reflect SCIF grant revenues that will be used for improvements in Patton Park on the pedestrian and vehicle bridge. Amendment 05052022-03 transfers \$25,000 from the stormwater operating budget to the stormwater capital project fund and increases contribution/donation revenue to fund an appropriation of \$49,620 for mud creek area stormwater planning.

BUDGET IMPACT: 05052022-02 - Fund 301: \$250,000 increase.
05052022-03 - Fund 467: \$49,620 increase, Fund 067: \$25,000 decrease.

Is this expenditure approved in the current fiscal year budget?

If no, describe how it will be funded.

ATTACHMENTS:

1. Amendment 05052022-02
2. Amendment 05052022-03

TO MAYOR & COUNCIL - May 5, 2022

FISCAL YEAR 2022
Form Number - 05052022-01**BUDGET AMENDMENT**

FUND 010 | 410

ACCOUNT NUMBER	DESCRIPTION OF ACCOUNT	INCREASE	DECREASE
010-1300-554002	Capital Outlay - Vehicles	-	28,500
010-0000-598901	Transfer Out (to 410)	28,500	-
FUND 010	TOTAL REVENUES	-	-
	TOTAL EXPENDITURES	28,500	28,500
410-0000-470100-22010	Transfer In (from 010)	28,500	-
410-1300-554002-22010	Capital Outlay - Vehicles	28,500	-
FUND 410	TOTAL REVENUES	28,500	-
	TOTAL EXPENDITURES	28,500	-

An amendment moving \$28,500 budget from the Police Department's annual operating budget to a capital project ordinance to fund the purchase of a necessary patrol truck which will arrive after July 1, 2022.

City Manager_____
Date_____
City Clerk

Approved:

Date

5/5/2022

TO MAYOR & COUNCIL - May 5, 2022

FISCAL YEAR 2022
05052022-02

BUDGET AMENDMENT

FUND 301

ACCOUNT NUMBER	DESCRIPTION OF ACCOUNT	INCREASE	DECREASE
301-0000-420050-G2205	Grant Revenue	250,000	-
301-1502-550103-G2205	Capital Outlay CIP	250,000	-
FUND 301	TOTAL REVENUES	250,000	-
	TOTAL EXPENDITURES	250,000	-
An amendment to increase the grant project fund (301) by \$250,000 to reflect a SCIF grant received to complete capital project work at Patton Park related to a pedestrian and vehicular bridge.			

City Manager

Date

City Clerk

Approved: _____
Date 5/5/2022

TO MAYOR & COUNCIL - May 5, 2022

FISCAL YEAR 2022
05052022-03

BUDGET AMENDMENT

FUND 067 | 467

ACCOUNT NUMBER	DESCRIPTION OF ACCOUNT	INCREASE	DECREASE
067-7555-556001	Capital Outlay - Other	-	25,000
067-0000-598901	Transfer Out (to 467)	25,000	-
FUND 0670	TOTAL REVENUES	-	-
	TOTAL EXPENDITURES	25,000	25,000
467-0000-470100-G2204	Transfer In (from 067)	25,000	-
467-0000-460090-G2204	Contributions/Donations	24,620	-
467-7555-550103-G2204	Capital Outlay - CIP	49,620	-
FUND 467	TOTAL REVENUES	49,620	-
	TOTAL EXPENDITURES	49,620	-
An amendment to transfer budget (\$25,000) from the stormwater annual operating budget to a capital project ordinance and increase contribution/donation revenue by \$24,620 to reflect a grant. The total \$49,620 appropriation will be used for a multi-year mud creek area stormwater plan.			

City Manager

Date

City Clerk

Approved: _____
Date 5/5/2022



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: Adam Murr **MEETING DATE:** 05/05/2022

AGENDA SECTION: CONSENT **DEPARTMENT:** Administration

TITLE OF ITEM: May 2022 Grant Project Ordinances – *Adam Murr, Budget Manager*

SUGGESTED MOTION(S):

I move City Council adopt the grant and capital project ordinance(s) for the Mud Creek Stormwater Planning Project, #G2204, and the SCIF Grant Project #G2205 and the budget(s) as presented.

SUMMARY:

General Statute 159-13.2 provides North Carolina local governments the power to grant and maintain capital project ordinances.

The City has received grant revenue for the Mud Creek Stormwater Planning Project #G2204 and the SCIF Grant Project #G2205; therefore, staff proposes the adoption of two grant project ordinances to assist with the appropriate tracking and execution of the grant projects.

BUDGET IMPACT: Project #G2204: \$49,620 increase to fund 467
Project #G2205: \$250,000 increase to fund 301

Is this expenditure approved in the current fiscal year budget? Yes.

If no, describe how it will be funded.

Project #G2204: Transfer in from the Stormwater Fund (067) and contributions/donations.

Project #G2205: Grant contributions increase in the Grant Project Fund (301).

ATTACHMENTS:

Mud Creek Stormwater Planning Project, #G2204 Grant Project Ordinance
SCIF Grant Project, #G2205 Grant Project Ordinance

Ordinance # _____

**GRANT PROJECT ORDINANCE FOR
THE EXECUTION, ACQUISITION, CONSTRUCTION, AND INSTALLATION OF
THE MUD CREEK STORMWATER PLANNING PROJECT**

BE IT ORDAINED by the Governing Board of the City of Hendersonville, North Carolina that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following grant project ordinance is hereby adopted:

Section 1: The project authorized is a City project described as the Mud Creek Stormwater Planning Project.

Section 2: The project will be complete in accordance with the requirements set by grant requirements and all relevant North Carolina state statutes.

Section 3: The following amounts are appropriated for the project:

Account Codes				Account Name	Total Budget
Fund	Dept.	Account	Project		
467	7555	550103	G2204	Capital Outlay – CIP	\$ 49,620

Total Project Appropriation \$ 49,620

Section 4: The following revenues are anticipated to be available for the project:

Account Codes				Account Name	Total Budget
Fund	Dept.	Account	Project		
467	0000	460090	G2204	Contribution/Donations	\$24,620
467	0000	470100	G2204	Transfers In	\$25,000

Total Project Revenue \$49,620

Section 5: The Finance Director is hereby directed to maintain within the grant project fund sufficient specific detailed accounting records to satisfy the disclosure requirements of all the contractual agreements, if applicable.

Section 6: Funds may be advanced from the Stormwater Fund and General Fund as necessary for the purpose of making payments as due. Reimbursement requests shall be made in an orderly and timely manner.

Section 7: The Finance Director is directed to report, on a quarterly basis, on the financial status of each project element in Section 3 and Section 4.

Section 8: The Finance Director is further instructed to include a detailed analysis of past and future revenues and expenses during each annual budget submission made to the Governing Board.

Section 9: Copies of this grant project shall be furnished to the City Clerk, Finance Director and City Manager for direction in carrying out this project.

ADOPTED by the City Council of the City of Hendersonville, North Carolina, on this 5th day of May, 2022.

Barbara G. Volk, Mayor

ATTEST:

City Clerk

Approved as to form:

City Attorney

Ordinance # _____

**GRANT PROJECT ORDINANCE FOR
THE EXECUTION, ACQUISITION, CONSTRUCTION, AND INSTALLATION OF
THE SCIF GRANT PROJECT**

BE IT ORDAINED by the Governing Board of the City of Hendersonville, North Carolina that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following grant project ordinance is hereby adopted:

Section 1: The project authorized is a City project described as the SCIF Grant Project.

Section 2: The project will be complete in accordance with the requirements set by grant requirements and all relevant North Carolina state statutes.

Section 3: The following amounts are appropriated for the project:

Account Codes				Account Name	Total Budget
Fund	Dept.	Account	Project		
301	1502	550103	G2205	Capital Outlay CIP	\$250,000

Total Project Appropriation \$250,000

Section 4: The following revenues are anticipated to be available for the project:

Account Codes				Account Name	Total Budget
Fund	Dept.	Account	Project		
301	0000	420050	G2205	Grant Revenue	\$250,000

Total Project Revenue \$250,000

Section 5: The Finance Director is hereby directed to maintain within the grant project fund sufficient specific detailed accounting records to satisfy the disclosure requirements of all the contractual agreements, if applicable.

Section 6: Funds may be advanced from the General Fund as necessary for the purpose of making payments as due. Reimbursement requests shall be made in an orderly and timely manner.

Section 7: The Finance Director is directed to report, on a quarterly basis, on the financial status of each project element in Section 3 and Section 4.

Section 8: The Finance Director is further instructed to include a detailed analysis of past and future revenues and expenses during each annual budget submission made to the Governing Board.

Section 9: Copies of this grant project shall be furnished to the City Clerk, Finance Director and City Manager for direction in carrying out this project.

ADOPTED by the City Council of the City of Hendersonville, North Carolina, on this 5th day of May, 2022.

Barbara G. Volk, Mayor

ATTEST:

City Clerk

Approved as to form:

City Attorney

Resolution #__-____

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL OF FINAL
ACCEPTANCE OF NEGOTIATED OFFER**

WHEREAS, the City of Hendersonville owns certain property described as 328 N Overlook Terrace, Hendersonville, NC 28739, being all of lot 15 of the Overlook Subdivision as shown on the plat thereof recorded in Plat Cabinet B, at Slide 375A, in the Office of the Register of Deeds for Henderson County, having a tax parcel ID of 9568057733, and having been acquired by the City of Hendersonville in Deed Book 773 at Page 879 of the Henderson County Register of Deeds Office (“Property”); and

WHEREAS, North Carolina General Statute Section 160A-269 permits the City to sell property by upset bid after receiving and offer to purchase; and

WHEREAS, the City has received a NEGOTIATED OFFER RECEIVED PURSUANT TO N.C.G.S. § 160A-269 (“Offer”), a copy of which is attached hereto and incorporated herein by reference; and

WHEREAS, pursuant to the Offer, Keith M. Maxwell and Cynthia E. Maxwell, Trustees of the Keith M. Maxwell Living Trust; and Keith M. Maxwell and Cynthia E. Maxwell, Trustees of the Cynthia E. Maxwell Living Trust, (“Buyers”), are offering to purchase the Property for the sum of \$10,000, subject to the terms and conditions contained within the Offer; and

WHEREAS, on April 7, 2022, the City Council issued a proposed acceptance of the Offer and authorized the Offer to be advertised for upset bids pursuant to N.C.G.S. § 160A-269; and

WHEREAS, the Offer was advertised in the Hendersonville Times-News on April 15, 2022 and no upset bids were received; and

WHEREAS, subject to the terms below, the City Council wishes to issue a final acceptance of the Offer;

NOW THEREFORE, BE IT RESOLVED, the City Council of the City of Hendersonville resolves that:

1. The Council issues a final acceptance of the Offer pursuant to the procedures of 160A-269, and authorizes the sale to the Buyers, Keith M. Maxwell and Cynthia E. Maxwell, Trustees of the Keith M. Maxwell Living Trust; and Keith M. Maxwell and Cynthia E. Maxwell, Trustees of the Cynthia E. Maxwell Living Trust, or an authorized assignee as allowed by Offer. The City Manager, City Clerk, and the City Attorney are authorized to

take all actions on behalf of the City which are consistent with the terms of the Offer, including but not limited to the signature of all necessary documentation, to effectuate the closing on the sale of the Property.

Adopted by the City Council of the City of Hendersonville, North Carolina on this _____ day of _____, 20____.

Attest:

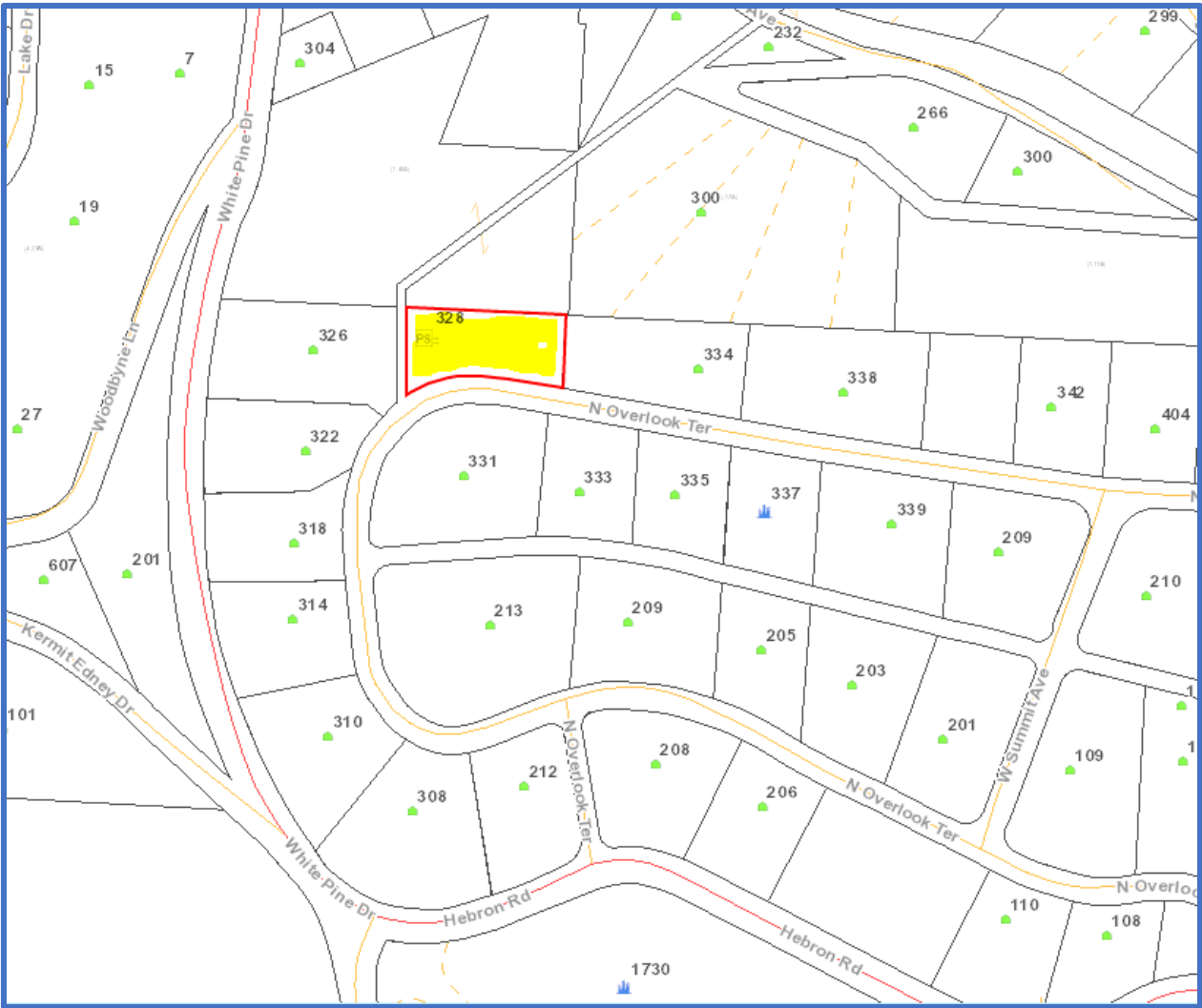
Barbara G. Volk, Mayor, City of Hendersonville

Angela L. Reece, City Clerk

Approved as to form:

Angela S. Beeker, City Attorney

Lot 15, Overlook Subdivision, Plat Cabinet B, Slide 375A



STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

**NEGOTIATED OFFER RECEIVED PURSUANT TO N.C.G.S. § 160A-269
("Offer")**

NOW COMES, **KEITH M MAXWELL and CYNTHIA E MAXWELL, TRUSTEES, THE KEITH M MAXWELL LIVING TRUST;** and **KEITH M MAXWELL and CYNTHIA E MAXWELL, TRUSTEES, THE CYNTHIA E MAXWELL LIVING TRUST,** ("Buyers") and offers to purchase from the **CITY OF HENDERSONVILLE**, a North Carolina municipal corporation ("CITY") that property more particularly described in paragraph below entitled "PROPERTY", attached hereto and incorporated by reference, on the terms and conditions hereinafter set forth:

PROPERTY: Lying and Being in the HENDERSON County, being all of lot 15 of the Overlook Subdivision as shown on the plat thereof recorded in Plat Cabinet B, at Slide 375A, in the Office of the Register of Deeds for Henderson County. The Property has a tax parcel ID of 9568057733. The property was acquired by the CITY in Deed Book 773 at Page 879 of the Henderson County Register of Deeds Office.

OFFER: Buyers offer to pay to CITY the sum of \$10,000.00.

ADDITIONAL TERMS AND CONDITIONS: Those additional terms and conditions as specified in Exhibit A, attached hereto and incorporated by reference, shall be deemed part of this Offer as if fully set forth herein.

UPSET BID PROCEDURE TO GOVERN: It is acknowledged that the sale of the Property, if any, will be governed by the procedures of North Carolina General Statute § 160A-269 (the "Statute"). This Offer will be presented to the Hendersonville City Council for consideration of whether to issue a proposed acceptance of the Offer. "Proposed Acceptance" shall mean the adoption of a Resolution by the Hendersonville City Council at a duly held meeting, proposing to accept this Offer, and directing that this Offer be advertised for upset bid. If Hendersonville's City Council issues a Proposed Acceptance, the Buyers shall deposit with the CITY Clerk a sum equal to five (5%) percent of this Offer. The CITY shall then cause to be published in a newspaper of record a notice that it proposes to accept this Offer, generally describing the Property and the terms of this Offer, and advise that anyone may make an upset bid within ten days of the publication of the notice in an amount prescribed by the Statute. If there is an upset bid, then upon the maker of the upset bid making the deposit with the CITY Clerk as is required by the Statute, the deposit made hereunder shall be refunded, and this Offer shall be deemed null and void. If there is no upset bid received, this Offer will again be presented to the Hendersonville City Council for Final Acceptance. "Final Acceptance" shall mean the adoption of a Resolution by the City Council, adopted at a duly called meeting, stating that this Offer has been finally accepted.

PREPARATION OF PLAT: Prior to closing, Buyers shall cause a surveyor selected by Buyers properly licensed under the laws of the State of North Carolina to prepare a current and accurate survey of the Property (herein called the "Survey"), which depicts the utility easements and driveway easement to be reserved by the CITY described below. Buyers shall cause three prints of the Survey, or a digital copy in acceptable format, to be delivered to The CITY's attorney at the address for copies of notices set forth in this Offer. The Survey will be utilized as the basis for the preparation of a legal description of the Property to be included in the special warranty deed to be delivered by the CITY to Buyers at Closing. In the event this Offer is rejected, terminated or becomes null and void for any reason, the CITY shall not be liable to the Buyers for the costs of any such Survey procured by the Buyers.

DUE DILIGENCE PERIOD: If the City Council issues Final Acceptance of this Offer, then there shall be a due diligence period of 30 days, beginning on the date of the Final Acceptance, during which period Buyers may terminate the Agreement, formed by the Final Acceptance of this Offer, for any reason or for no reason at all. Said period shall be referred to as the "Due Diligence Period." At the commencement of the Due Diligence Period, the CITY agrees to provide Buyers with any information and reports that it or its consultants have regarding the Property, including title and survey information, soils reports and environmental assessments. During the Due Diligence Period, Buyers shall be permitted to make such investigations of the Property, at Buyers' sole expense, and shall be permitted to make applications for any and all developmental approval of Buyers' plans for the Property. Buyers shall repair and return to the condition as of the date of this Offer any damage caused by all investigations of the Property performed by or on behalf of the Buyers.

At least ten days prior to the expiration of the Due Diligence Period, the Buyers may request in writing, an extension the Due Diligence Period for an additional 30 days. Extensions shall be at the sole and absolute discretion of the CITY.

CLOSING: If the City Council issues Final Acceptance of this Offer, then closing shall occur within 30 days after such Final Acceptance at CITY offices in Hendersonville, or such other place as is mutually agreeable to the parties. At closing, CITY shall deliver the title as described hereinbelow to the Property, and Buyers shall pay to CITY the balance of the purchase price in certified funds.

TITLE: CITY shall deliver a fee simple title to the Property by a Special Warranty Deed, subject to Permitted Exceptions as provided hereinbelow.

PERMITTED EXCEPTIONS: Title to the Property shall be subject to valid and enforceable restrictions of record and easements and rights of way affecting the Property, any applicable zoning or other land use laws and ordinances, and the lien for ad valorem taxes, if any.

The CITY may reserve easements for the placement, construction, replacement, and repair of existing utility lines on the property, such easements being 20 feet in width, with the location of the existing lines being the centerline of the easements. The CITY may also reserve an access easement across the current driveway to access existing utility lines.

COSTS: CITY shall be responsible for preparing the deed conveying title, and any documentary stamps that it is not exempt from paying. Buyers shall be responsible for all other costs. Each party will be responsible for its own attorney's fees.

OFFER AND ACCEPTANCE. This instrument shall constitute a binding offer by Buyers to the CITY and shall remain open for acceptance by the CITY until such time as (1) an upset bid has been received, and the bid deposit has been received by the CITY for such upset bid; (2) the CITY rejects this Offer, or (3) the CITY issues a Final Acceptance of this Offer, whichever occurs first. In the event the CITY receives an upset bid and the bid deposit for such upset bid is received by the CITY, or in the event the CITY rejects this Offer, then this Offer shall be deemed terminated, and neither party hereto shall have any obligation, duty, or liability to the other party. In the event the CITY issues a Final Acceptance of this Offer, this Offer shall become a binding Agreement between the parties hereto and shall be interpreted as an Agreement between the parties hereto in spite of the many references to this document as an "Offer."

REJECTION OF OFFER: It is understood and agreed by the Buyers that at any time prior to the issuance of a Final Acceptance of this Offer, the CITY may (1) reject any and all offers (including this Offer) and/or upset bids received, and/or (2) withdraw the Property from sale, as allowed by North Carolina General Statute § 160A-269.

EXECUTION OF THIS OFFER: The Buyers represent and warrants that this Offer has been duly authorized, and that the person signing has the authority to sign this Offer on behalf of the Buyers.

This Offer is made this _____ day of _____, 2022.

KEITH M MAXWELL LIVING TRUST

DocuSigned by:
By: Keith M Maxwell, Trustee 3/25/2022 | 8:28:54 AM PDT
3745A6ADE2364E1...

DocuSigned by:
By: Cynthia E Maxwell, Trustee 3/25/2022 | 8:28:03 AM PDT
3745A6ADE2364E1...

CYNTHIA E MAXWELL LIVING TRUST

DocuSigned by:
By: Keith M Maxwell, Trustee 3/25/2022 | 8:28:54 AM PDT
3745A6ADE2364E1...

DocuSigned by:
By: Cynthia E Maxwell, Trustee 3/25/2022 | 8:28:03 AM PDT
3745A6ADE2364E1...

Date of Proposed Acceptance by the CITY: 04.07.2022

Date of Final Acceptance by the CITY: _____

EXHIBIT A**ADDITIONAL TERMS AND CONDITIONS**

1. **DISCLAIMER OF WARRANTIES:** BUYER ACKNOWLEDGES AND AGREES THAT THE CITY DOES NOT, BY THE ISSUANCE OF A PROPOSED ACCEPTANCE OR FINAL ACCEPTANCE, OR BY THE EXECUTION AND DELIVERY OF ANY DOCUMENT OR INSTRUMENT EXECUTED AND DELIVERED IN CONNECTION WITH THE SALE OF THE PROPERTY, MAKE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND OR NATURE WHATSOEVER, WITH RESPECT TO THE PROPERTY, AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE CITY MAKES, AND SHALL MAKE, NO EXPRESS OR IMPLIED WARRANTY AS TO MATTERS OF TITLE (OTHER THAN THE CITY'S LIMITED WARRANTY OF TITLE SET FORTH IN THE SPECIAL WARRANTY DEED TO BE DELIVERED AT CLOSING), SUCH MATTERS AS AN ACCURATE SURVEY WOULD REVEAL, VALUE & MARKETABILITY OF THE PROPERTY, ZONING, TAX CONSEQUENCES, PHYSICAL OR ENVIRONMENTAL CONDITION (INCLUDING, WITHOUT LIMITATION, LAWS, RULES, REGULATIONS, ORDERS AND REQUIREMENTS PERTAINING TO THE USE, HANDLING, GENERATION, TREATMENT, STORAGE OR DISPOSAL OF ANY TOXIC OR HAZARDOUS WASTE OR TOXIC, HAZARDOUS OR REGULATED SUBSTANCE), VALUATION, GOVERNMENTAL APPROVALS, GOVERNMENTAL REGULATIONS OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE PROPERTY, (HEREINAFTER COLLECTIVELY CALLED THE "DISCLAIMED MATTERS"). BUYER AGREES THAT, WITH RESPECT TO THE PROPERTY, BUYER HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF THE CITY. IF THE CITY ISSUES A FINAL ACCEPTANCE FOR THE PROPERTY, THE CITY SHALL SELL AND CONVEY TO BUYER, AND BUYER SHALL ACCEPT, THE PROPERTY "AS IS", "WHERE IS", AND WITH ALL FAULTS, AND THERE ARE NO ORAL AGREEMENTS, WARRANTIES OR REPRESENTATIONS, COLLATERAL TO OR AFFECTING THE PROPERTY BY THE CITY OR ANY THIRD PARTY. WITHOUT IN ANY WAY LIMITING ANY PROVISION OF THIS PARAGRAPH, BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT IT HEREBY WAIVES, RELEASES AND DISCHARGES ANY CLAIM IT HAS, MIGHT HAVE HAD OR MAY HAVE AGAINST THE CITY WITH RESPECT TO (i) THE DISCLAIMED MATTERS, (ii) THE CONDITION OF THE PROPERTY, EITHER PATENT OR LATENT, (iii) THE PAST, PRESENT OR FUTURE CONDITION OR COMPLIANCE OF THE PROPERTY WITH REGARD TO ANY ENVIRONMENTAL PROTECTION, POLLUTION CONTROL OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, INCLUDING, WITHOUT LIMITATION, CERCLA, AND (iv) ANY OTHER STATE OF FACTS THAT EXISTS WITH RESPECT TO THE PROPERTY. THE TERMS AND CONDITIONS OF THIS PARAGRAPH SHALL EXPRESSLY SURVIVE THE CONSUMMATION OF THE PURCHASE AND SALE OF THE PROPERTY ON THE CLOSING DATE, THE DELIVERY OF THE DEED AND THE PAYMENT OF THE

PURCHASE PRICE, WITHOUT REGARD TO ANY LIMITATIONS UPON SURVIVAL FORTH IN THIS OFFER.

2. **Form of Deposit.** Buyer's five percent deposit shall be made in cash, cashier's check, or money order. Any interest earned on the deposit while held by the CITY shall accrue to the benefit of the CITY, whether or not the Hendersonville City Council issues a Final Acceptance of this Offer and whether or not the purchase and sale of the Property contemplated hereby is consummated in accordance with the terms and provisions of this Offer.
3. **Other Payments at Closing.**
 - a. **Taxes.** Buyer will be responsible for ad valorem taxes accruing after the date of sale, it being acknowledged that the Property has been exempt from taxation during the period The CITY has owned the Property. In the event Closing occurs in 2022, taxes will be prorated between the CITY and the Buyer over the 2022 calendar year.
 - b. **Dues, Assessments, Common Area Maintenance.** All dues, assessments and common area maintenance charges, and similar impositions imposed upon or assessed against the Property (herein called the "**CAM Fees**"), for the year in which Closing occurs shall be prorated as of the Closing Date on a calendar year basis.
 - c. **Other.** Any other items which are customarily prorated in connection with the purchase and sale of properties similar to the Property shall be prorated as of the Closing Date.

In the event that the amount of any item to be prorated is not determinable at the time of Closing, such proration shall be made on the basis of the best available information, and the parties shall re-prorate such item promptly upon receipt of the applicable bills therefor and shall make between themselves any equitable adjustment required by reason of any difference between the estimated amount used as a basis for the proration at Closing and the actual amount subject to proration. In the event any prorated item is due and payable at the time of Closing, the same shall be paid at Closing. If any prorated item is not paid at Closing, the CITY shall deliver to Buyer the bills therefor promptly upon receipt thereof and Buyer shall be responsible for the payment in full thereof within the time fixed for payment thereof and before the same shall become delinquent.

4. **Possession at Closing.** The CITY shall surrender possession of the Property to Buyer on the Closing Date, subject to the Permitted Exceptions.
5. **Remedies.**

(a) If the Hendersonville City Council issues a Final Acceptance of this Offer, and if the purchase and sale of the Property contemplated hereby is not consummated in accordance with the terms and provisions of this Offer due to circumstances or conditions which constitute a default by Buyer under this Offer, the bid deposit shall retained by the CITY as the CITY's full liquidated damages for such default. The parties acknowledge that the CITY's actual damages in the event of a default by Buyer will be difficult to ascertain, that such liquidated damages represent the parties' best estimate of such damages, and that the CITY and Buyer believe such liquidated damages are a reasonable estimate of such damages. The parties expressly acknowledge that the foregoing liquidated damages are intended not as a penalty, but as full

liquidated damages, in the event of a default. Such liquidated damages shall be the exclusive remedy of the CITY by reason of a default by Buyer, and the CITY hereby waives and releases any right to sue Buyer for specific performance of this Offer or to prove that the CITY's actual damages exceed the amount which is herein provided to the CITY as full liquidated damages.

(b) If the Hendersonville City Council issues a Final Acceptance of this Offer, and if the purchase and sale of the Property contemplated hereby is not consummated in accordance with the terms and provisions of this Offer due to circumstances or conditions which constitute a default by the CITY under this Offer, the Earnest Money shall be refunded to Buyer promptly upon request, and Buyer, as its sole and exclusive remedy, shall have the right to terminate this Offer, in which event all rights and obligations of the parties under this Offer shall expire, and this Offer shall become null and void, and the CITY shall have no other liability to Buyer under this Offer.

6. General Provisions.

- a. **Brokers.** There are no real estate brokers, agents or consultants involved in the making of this Offer, or in any Proposed Acceptance or Final Acceptance issued by the CITY, and the parties hereto shall indemnify and hold each other harmless from any fee or brokerage claims arising out of this transaction.
- b. **Divestment Act.** The Buyer is not listed on the Final Divestment List ("Divestment List") created by the North Carolina State Treasurer pursuant to Article 6E, N.C.G.S. § 147-86.55, *et seq.* ("Iran Divestment Act of 2015"). The Buyer shall not utilize in the performance of its obligations hereunder any agent, contractor or subcontractor listed on the Divestment List.
- c. **E-Verify.** The Buyer shall comply with the requirements of Article 2 of Chapter 64 of the General Statutes of North Carolina. Further, if the Buyer utilizes an agent, contractor or subcontractor, Buyer shall require them to comply with the requirements of Article 2 of Chapter 64 of the General Statutes of North Carolina.
- d. **Notice.** Whenever any notice, demand or request is required or permitted under this Offer, such notice, demand or request shall be in writing and shall be delivered by hand, be sent by registered or certified mail, postage prepaid, return receipt requested, or be sent by nationally recognized commercial courier (UPS, FedEx, etc.) for next business day delivery, to the addresses set forth below.

To the Buyer: Keith M. Maxwell
Cynthia E. Maxwell
300 White Pine Dr
Hendersonville NC 28739

With copy to: Lawrence D. Winson, Attorney
140 4th Avenue West, Suite 102

Hendersonville, NC 28792

To the CITY: CITY OF HENDERSONVILLE
Attn: John Connet, City Manager
160 6th Avenue East
Hendersonville NC 28792

With copy to: Angela Beeker, City Attorney
160 6th Avenue East
Hendersonville NC 28792

All notices, demands or requests delivered by hand shall be deemed given upon the date so delivered; those given by mailing as hereinabove provided shall be deemed given on the date of deposit in the United States Mail; those given by commercial courier as hereinabove provided shall be deemed given on the date of deposit with the commercial courier. Nonetheless, the time period, if any, in which a response to any notice, demand or request must be given shall commence to run from the date of receipt of the notice, demand or request by the addressee thereof. Any notice, demand or request not received because of changed address of which no notice was given as hereinabove provided or because of refusal to accept delivery shall be deemed received by the party to whom addressed on the date of hand delivery, on the first calendar day after deposit with commercial courier, or on the third calendar day following deposit in the United States Mail, as the case may be. Notices may be sent by email or facsimile for convenience, but must be followed up by one of the means above, which will be the official notice.

- e. **Assignment.** This Offer may not be assigned by the Buyer.
- f. **Headings.** The use of headings, captions and numbers in this Offer is solely for the convenience of identifying and indexing the various provisions in this Offer and shall in no event be considered otherwise in construing or interpreting any provision in this Offer.
- g. **Applicable Law, Venue.** This Offer shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of North Carolina. The sole venue for any suit, claim or action shall be in a state or federal court sitting in HENDERSON County, North Carolina. Nothing herein shall be deemed to confer jurisdiction upon the federal courts, except as may be otherwise provided by law.
- h. **Entire Offer; Modification.** This Offer supersedes all prior discussions and agreements among the CITY and Buyer with respect to the purchase and sale of the Property and other matters contained herein, and this Offer contains the sole and entire understanding among the CITY and Buyer with respect thereto. This Offer shall not be modified or amended except by an instrument in writing executed by or on behalf of the CITY and Buyer.

- i. **Attorney's Fees.** In the event of any litigation between Buyer and the CITY under or in connection with this Offer, the prevailing party shall be entitled to recover from the other party the expenses of litigation (including reasonable attorneys' fees, expenses and disbursements) incurred by the prevailing party.
- j. **Authority.** Each party hereto warrants and represents that such party has full and complete authority to enter into this Offer and each person executing this Offer on behalf of a party warrants and represents that he has been fully authorized to execute this Offer on behalf of such party and that such party is bound by the signature of such representative.
- k. **Counsel.** Each party hereto warrants and represents that each party has been afforded the opportunity to be represented by counsel of its choice in connection with the execution of this Offer and has had ample opportunity to read, review, and understand the provisions of this Offer.
- l. **No Construction Against Preparer.** No provision of this Offer shall be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of such party's having or being deemed to have prepared or imposed such provision.
- m. **No Lien.** This Offer is not and shall not be deemed or considered to convey or be an interest in or lien against the Property.
- n. **No Recording.** In no event shall this Offer or any memorandum hereof be recorded by Buyer in any public records, and any such recordation or attempted recordation shall constitute a breach of this Offer by Buyer.
- o. **Time of Essence; Dates.** Time is of the essence of this Agreement. Anywhere a day certain is stated for payment or for performance of any obligation, the day certain so stated enters into and becomes a part of the consideration for this Agreement. If any date set forth in this Agreement shall fall on, or any time period set forth in this Agreement shall expire on, a day which is a Saturday, Sunday, federal or state holiday, or other non-business day, such date shall automatically be extended to, and the expiration of such time period shall automatically to be extended to, the next day which is not a Saturday, Sunday, federal or state holiday or other non-business day. The final day of any time period under this Agreement or any deadline under this Agreement shall be the specified day or date, and shall include the period of time through and including such specified day or date. All references to the "Effective Date," if any, shall be deemed to refer to the date the CITY issues a Final Acceptance of this Offer.

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL OF PROPOSED
ACCEPTANCE OF NEGOTIATED OFFER**

WHEREAS, the City of Hendersonville owns certain property described as 328 N Overlook Terrace, Hendersonville, NC 28739, being all of lot 15 of the Overlook Subdivision as shown on the plat thereof recorded in Plat Cabinet B, at Slide 375A, in the Office of the Register of Deeds for Henderson County, having a tax parcel ID of 956805773, and having been acquired by the City of Hendersonville in Deed Book 773 at Page 879 of the Henderson County Register of Deeds Office (“Property”); and

WHEREAS, North Carolina General Statute Section 160A-269 permits the City to sell property by upset bid after receiving and offer to purchase; and

WHEREAS, the City has received a NEGOTIATED OFFER RECEIVED PURSUANT TO N.C.G.S. § 160A-269 (“Offer”), a copy of which is attached hereto and incorporated herein by reference; and

WHEREAS, pursuant to the Offer, Keith M. Maxwell and Cynthia E. Maxwell, Trustees of the Keith M. Maxwell Living Trust; and Keith M. Maxwell and Cynthia E. Maxwell, Trustees of the Cynthia E. Maxwell Living Trust, (“Buyers”), are offering to purchase the Property for the sum of \$10,000, subject to the terms and conditions contained within the Offer; and

WHEREAS, subject to the terms below, the Hendersonville City Council wishes to issue a proposed acceptance of the Offer.


NOW THEREFORE, BE IT RESOLVED, the City Council of the City of Hendersonville resolves that:

1. The Council declares the Property surplus and proposes to accept the Offer pursuant to the procedures of 160A-269.
2. The Buyer is required to deposit with the City Clerk a sum equal to 5 % of the offer, or \$500.00. The Clerk will cause a notice to be published in a newspaper of record advising that upset bids will be accepted within 10 days of the date of publication, which bid shall increase the proposed sales price by at least an amount equal to 10% of the first \$1,000.00 of the purchase price and 5% of the excess. Such upset bids shall be made to the City Clerk and accompanied by a deposit equal to 5% of the new purchase price, at which time the Clerk shall then publish a new notice advising that further upset bids, increased in the same minimum amount may be accepted within 10 days from the date of publication.
3. Each bidder submitting an upset bid shall be bound by the same terms and conditions as contained in the Offer. Each bidder shall therefore be required to sign an offer in the form of the Offer attached hereto as Exhibit A, with the only differences being (1) a revised purchase price; and (2) modification of the terms of the upset bid procedure described in the Offer to reflect the terms of this Resolution.
4. When there are no further bidders, the high bid shall be reported to the Council by the Clerk.
5. Closing shall occur within 30 days of the issuance of a final acceptance by the Council.

6. The City reserves the right to withdraw the property from sale at any time before the issuance of a final acceptance and the right at any time to reject all bids.

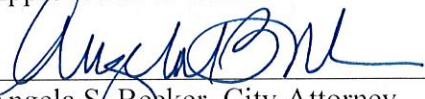
Adopted by the City Council of the City of Hendersonville, North Carolina on this 7th day of April, 2022.

Attest:


Barbara G. Volk, Mayor, City of Hendersonville


Angela L. Reece, City Clerk

Approved as to form:


Angela S. Beeker, City Attorney



StarNews | The Dispatch | Times-News
Sun Journal | The Daily News | The Star
The Free Press | Gaston Gazette

Order Confirmation

Not an Invoice

Section 5, Item H.

Account Number:	488558
Customer Name:	City Of Hendersonville
Customer Address:	City Of Hendersonville 160 6Th AVE E City Clerk Hendersonville NC 28792-3775
Contact Name:	Angela Reece
Contact Phone:	828-697-3005
Contact Email:	areece@hvlnc.gov
PO Number:	9568057733

Date:	04/13/2022
Order Number:	7173595
Prepayment Amount:	\$ 0.00

Column Count:	1.0000
Line Count:	100.0000
Height in Inches:	0.0000

Print

Product	#Insertions	Start - End	Category
HEN Times-News	1	04/15/2022 - 04/15/2022	Govt Public Notices
HEN blueridgenow.com	1	04/15/2022 - 04/15/2022	Govt Public Notices

Total Order Confirmation

\$17.00

**PUBLIC NOTICE
UPSET BIDS BEING
ACCEPTED FOR REAL
PROPERTY**

Please take notice that the City of Hendersonville has received a written, negotiated offer to purchase certain property owned by the City of Hendersonville, more particularly described as follows:

Lying and Being in the HENDERSON County, being all of lot 15 of the Overlook Subdivision as shown on the plat thereof recorded in Plat Cabinet B, at Slide 375A, in the Office of the Register of Deeds for Henderson County. The Property has a tax parcel ID of 956805733. The property was acquired by the CITY in Deed Book 773 at Page 879 of the Henderson County Register of Deeds Office.

The offered purchase price for the above-described real property is \$10,000.00. The City is accepting upset bids in accordance with N.C.G.S. §160A-269. The terms and conditions in the offer include: The property is being sold "as-is." The specific terms and conditions of the offer shall supersede the foregoing summary and shall govern all upset bids except as to purchase price.

To be eligible for consideration by the City as an upset bid, a bid must: (1) be submitted using the City approved bid form available from the City Clerk; (2) increase the existing offer by at least ten percent (10%) of the first \$1,000 and 5% of the remainder of the \$1,500.00 purchase price; (3) be accompanied by a deposit in the amount of five percent (5%) of the upset bid in cash, by cashier's check, or by certified check made payable to the City of Hendersonville. Please list the tax parcel ID in the subject line; (4) be received by the City Clerk by 5 pm on April 25, 2022; AND (5) be duly executed by an authorized individual. The first eligible upset bid received will be advertised for upset bids in accordance with this same process, and the upset bid process will continue until a ten (10) day period passes after advertisement with no further upset bids having been received. The final and highest upset bid received will be presented to the City Council for final acceptance. Bid deposits for any bids or upset bids not accepted will be refunded. The bid deposit for any bid or upset bid which is finally accepted by the City Council will be credited against the purchase price at closing, which must be paid in cash or other good funds.

The City reserves the right to withdraw the property from sale at any time, and to reject any and all bids or upset bids received.

The City Clerk is located at City Hall, 160 6th Avenue East, Hendersonville, NC 28792, and may be reached by calling (828) 697-3005 during normal business hours, or by emailing her at grece@hvlpc.gov. The mailing address is City of Hendersonville, Attn: City Clerk, 160 6th Avenue East, Hendersonville, NC 28792. Bidders wishing to submit an upset bid in person may enter the 6th Avenue entrance and ask for the City Clerk.

#7173595 4/13/2022

PUBLIC NOTICE**UPSET BIDS BEING ACCEPTED FOR REAL PROPERTY**

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CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: Brendan Shanahan, Civil
Engineer IV

MEETING DATE: May 5, 2022

AGENDA SECTION: CONSENT

DEPARTMENT: Engineering

TITLE OF ITEM: Utility Extension Agreement for the Heritage Park Subdivision – *Brendan Shanahan, Engineering*

SUGGESTED MOTION(S): I move that City Council approve the Resolution authorizing the City Manager to enter into a Utility Extension Agreement with Richard Eugene Lance, Jennifer Michelle Lance, Ronald Page Lance, Christopher Page Lance, Tonya Lance Rice, and Jackson Family Developers, LLC for the Heritage Park Subdivision as presented and recommended by staff.

SUMMARY:

The Heritage Park Subdivision located off Rutledge Road in Henderson County proposes to extend the City's water distribution system to serve said expansion. The attached Utility Extension Agreement (UEA) outlines the water line extension process and assigns responsibilities to the Developer and City. We welcome any questions that you may have.

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: 21142

PETITION NUMBER: N/A

ADDITIONAL PETITION NUMBER: N/A

PETITIONER NAME: N/A

ATTACHMENTS:

Utility Extension Agreement – Heritage Park Subdivision

Map showing Heritage Park Subdivision parcel

Resolution #__-____

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO
AUTHORIZE THE CITY MANAGER TO ENTER INTO A UTILITY EXTENSION
AGREEMENT WITH RICHARD EUGENE LANCE, JENNIFER MICHELLE LANCE,
RONALD PAGE LANCE, CHRISTOPHER PAGE LANCE, TONYA LANCE RICE, AND
JACKSON FAMILY DEVELOPERS, LLC FOR THE HERITAGE PARK SUBDIVISION**

WHEREAS, the City of Hendersonville owns, operates and maintains a water distribution system to serve customers throughout Henderson County; and

WHEREAS, residential, commercial, and industrial developments often require public water service as a part of their development projects; and

WHEREAS, the Developer extends public water lines to their site, which upon completion and acceptance, are provided to the City to own, operate, and maintain; and

WHEREAS, the City requires a Utility Extension Agreement to be executed to establish requirements of both the Developer and the City for the water line extension process; and

WHEREAS, Richard Eugene Lance, Jennifer Michelle Lance, Ronald Page Lance, Christopher Page Lance, Tonya Lance Rice, the “Owners”, and Jackson Family Developers, LLC., the “Developer”, will enter into a Utility Extension Agreement with the City to provide water service to the Heritage Park Subdivision.

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

1. The Utility Extension Agreement with Richard Eugene Lance, Jennifer Michelle Lance, Ronald Page Lance, Christopher Page Lance, Tonya Lance Rice, the “Owners”, and Jackson Family Developers, LLC., the “Developer”, to provide water service to the Heritage Park Subdivision is approved, as presented.
2. City Manager is authorized to execute the Utility Extension Agreement, and to approve and execute amendments to the Utility Extension Agreement in the future provided such amendments do not impose a financial obligation upon the City.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 5th day of May 2022.

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

Prepared by and return to: Daniel Heyman, Staff Attorney, City of Hendersonville, in the City Box

UTILITY EXTENSION AGREEMENT

THIS AGREEMENT, Made and entered into this ____ day of _____, 2022, by and between the **CITY OF HENDERSONVILLE**, a North Carolina municipal corporation, situated in Henderson County, herein referred to as the "City", and **Richard Eugene Lance, Jennifer Michelle Lance, Ronald Page Lance, Christopher Page Lance, Tonya Lance Rice, and Jackson Family Developers, LLC** a North Carolina Limited Liability Company, herein collectively referred to as "Developer,"

WITNESSETH:

THAT WHEREAS, Developer is the owner of, and is desirous of developing and improving, tracts of land situated in Henderson County, State of North Carolina, described as follows:

Consisting of two tracts which combined total to +/- 50.74 acres, and being all of that real property described in that deed recorded in Deed Book 3146 at page 246, Henderson County registry, having a REID of 10002507, hereafter, "Tract One," and being all of that real property described in that deed recorded in Deed Book 1251 at page 40, Henderson County registry, having a REID of 9967788, hereafter "Tract Two," both Tracts One and Two hereinafter collectively referred to as the "Property"; and

WHEREAS, in the process of such development and improvement, Developer is desirous of constructing water infrastructure and/or sanitary sewer infrastructure to and on a portion of said tract(s) of land, for which the City requires that the Developer enter into a utility extension agreement with the City, said water and/or sewer infrastructure to consist of the following:

Being and consisting of: Water Service Extension consisting of +/- 3,224 lineal feet of 6" water line (DIP/CL 350) together with valves, hydrants, and appurtenances, running northerly within the project confines from the intersection of Rutledge Road and an unnamed proposed road on the north side of Rutledge Road, such intersection being approximately 480 linear feet northeasterly from the existing intersection of Rutledge Road and Silent Spring Road, then easterly within the project confines and terminating at a proposed fire hydrant assembly, and connecting to an existing 8" water main in Rutledge Road; being

more particularly shown and described on those construction plans and specifications, dated September 29, 2021 and bearing project number 12121, prepared by Civil Design Concepts, PA a Civil Engineering firm, said plans being incorporated herein by reference. The total project acreage is: 21.16 acres. The above described Water Service Extension is hereinafter referred to as the "New Infrastructure". It is understood and agreed that the New Infrastructure may be modified or amended from and after the date of this Agreement as may be required to meet the standards of the City of Hendersonville. As used herein, "New Infrastructure" shall be deemed to include any and all of any such modifications and amendments.; and

WHEREAS, the Developer has received zoning approval from the designated governing body for such development and improvement on the Property; and as used herein, New Infrastructure shall be deemed to include changes to the New Infrastructure made pursuant to amendments to the Plans which have been approved by the City; and

WHEREAS, the Property is not located within the City's municipal boundaries but is located within the Town of Fletcher, North Carolina; and

WHEREAS, the City is not obligated to offer water or sanitary sewer service to property outside its corporate limits; and

WHEREAS, Developer desires to have the completed New Infrastructure connected to the City's municipal water system and/or sanitary sewer system and made an integral portion thereof; and

WHEREAS, the City will permit said system(s) to be connected to the municipal system(s) under the terms and conditions heretofore established and agreed upon between the parties and specifically in conformance with the requirements of the most recent extension policy, most recent water and sewer standard construction specifications and details, and the City's Code of Ordinances currently in force.

NOW, THEREFORE, in consideration of the mutual benefits which will result to the parties in carrying out the terms of this Agreement, it is agreed as follows:

1. Developer shall, at Developer's own expense, employ a North Carolina registered and licensed professional engineer ("Engineer") to complete design and permitting of the proposed New Infrastructure in conformance with NCAC Title 15A Subchapter 18C (water) and NCAC Title 15A Subchapter 02T(sanitary sewer), the City's water and sewer standard construction specifications and details, and the City water and/or sewer Master Plan(s).
2. Developer shall require the Engineer to submit plans, reports, technical specifications, fees, permit applications, and any other items as required and approvable by the City ("Required Documents"). The Engineer shall disclose all proposed changes in the approved construction plans to the City in writing. If proposed changes are deemed by the City to be "significant" in nature, the City may require the Engineer to resubmit plans for re-permitting. The determination of whether a change is deemed to be significant shall be in the sole and absolute discretion of the City, and the Developer agrees to be bound thereby. This will require written approval by the City prior to re-submitting to the permitting agency or before proceeding with changes, even if permitting agency re-submittal is not required. City approval of a utility extension is subject to expiration should construction not be completed after a period of two years from the date of approval. Once the Required Documents have been approved by the City, they shall be deemed to be incorporated

herein by reference as an amendment to this Agreement to indicate the Developers construction obligations under this Agreement.

3. The City will perform construction inspection during installation of the New Infrastructure and upon project completion submit written certification that the project was completed in accordance with the approved plans and specifications as required by NCAC Title 15A Subchapter 18C (water) and NCAC Title 15A Subchapter 02T (sanitary sewer). Water and Sewer inspection fees shall be in accordance with the adopted City Fee Schedule as of the date of this agreement. Fees will be paid by the Developer upon certification and acceptance of the New Infrastructure, with amounts due being based on length of lines inspected, certified and accepted.
4. The Developer shall, at his or her own expense, furnish and transfer to the City all on-site and off-site easements, rights-of-way, and real property required for access to and perpetual maintenance and operation of the New Infrastructure and its appurtenances in accordance with the terms of this Agreement as provided herein below.

Developer will be required to enter into the City's standard Deed of Dedication and Conveyance With Associated Easements for conveyance of the New Infrastructure and on-site easements, as amended. Further Developer will be required to use the City's standard Utility Infrastructure Easement Agreement when securing the necessary off-site right of way for the operation and maintenance of the New Infrastructure. For the avoidance of doubt, both standard forms permit use of the easements for the future installation of water, sewer and stormwater lines, and their associated appurtenances and accessories, in addition to the New Infrastructure, by or on behalf of the City. The City shall provide a copy of these standard forms upon request by the Developer.

5. Developer shall, at his or her own cost and expense, furnish all materials and all equipment and perform all the work necessary to complete the construction of the New Infrastructure described in the plans and specifications as approved by the City's authorized representative and permitting agency.
6. The installation and construction of the New Infrastructure shall be performed by a reputable and responsible Contractor possessing a valid North Carolina Public Utility Contractor's License directly related to the installation of the New Infrastructure issued by the North Carolina Licensing Board for General Contractors. As used herein, a "responsible Contractor" shall mean one possessing the requisite knowledge, experience, and financial resources to complete the construction of the New Infrastructure in accordance with the plans and specifications within the time allotted.
7. The Engineer shall contact the City prior to the start of construction in order to schedule a preconstruction conference between the Developer, Contractor, Engineer, and City staff. This request should be made at least seven (7) days in advance of the anticipated starting date. Developer or Engineer shall receive a written notice to proceed (NTP) from the City before commencing with construction. If construction is anticipated to be greater than sixty (60) days, a monthly progress meeting shall be scheduled once every thirty (30) days. The date and time of the monthly progress meeting shall be established during the preconstruction conference.
8. Developer shall submit the name, address and the Public Utility Contractor's License Identification Number of the proposed Contractor to the City prior to the preconstruction meeting. The City may investigate the validity

of the Contractor's license and the Contractor's status as a responsible Contractor by methods including but not limited to contacting the owners of past projects for which the Contractor furnished work in order to obtain reference information

9. City staff will be assigned for the express purpose of periodic construction observation and inspection. The City's construction inspector(s) shall have the authority to report all discrepancies identified in all phases of construction to the Engineer regarding conformance with the approved construction drawings and specifications. This report shall in no way relieve the Developer of his or her obligation to engage a professional engineer to perform construction inspection and coordinate construction.
10. During construction, no deviations from the approved plans and specifications shall be allowed without the prior express written approval of the City and permitting agency if deemed necessary by the City.
11. The City Engineer, or authorized representative, shall be authorized to resolve disagreements between Developer's Contractor(s), and the City's construction inspector(s) regarding conformance with approved plans and/or specifications.
12. Upon completion of construction, the Developer shall cause the Engineer to arrange for a final inspection to be performed jointly by the Engineer, the contractor, and the City's construction inspector to determine if the project is acceptable to the City. At this time, a draft as-built shall be submitted to the City. If the project is not immediately acceptable, any deficiencies shall be noted in a written report (punch list) prepared by the City. This report shall be transmitted to the responsible parties. It shall be the responsibility of the Developer to correct any such deficiencies and arrange for a re-inspection of the system.
13. As part of the final inspection process for sewer collection systems, Developer shall satisfactorily complete the following as described in the most recent water and sewer standard construction specifications and details: air test, manhole vacuum tests, and mandrel deflection test. Video of the new sanitary sewer collection system by means of closed-circuit television (CCTV) will be performed by the City. All testing shall be certified and all certifications, along with the related data and any video of the sewer system, shall be submitted to the City before final acceptance of the project is granted by the City.
14. As part of the final inspection process for water distribution systems, Developer shall satisfactorily complete the following: pressure test lines, bacteriological sampling performed by a certified laboratory. The City's certified laboratory may be utilized. All testing shall be certified and all certifications, along with related data, shall be submitted to the City before final acceptance of the project is granted by the City.
15. Once all deficiencies are corrected and the project is deemed acceptable to the City, the Developer shall cause the Engineer to submit as-builts in formats acceptable to the City. The Engineer shall also submit any easements required for the New Infrastructure and any deeds necessary to convey ownership to the City. The Developer shall be responsible for acquiring easements from any third parties owning property over which any portion of the New Infrastructure is constructed, said easements to be titled in the name of the City, using forms to be provided by the City.

16. Prior to the activation of services on the newly constructed New Infrastructure, Developer shall convey unencumbered title and ownership to the City, of the New Infrastructure and its appurtenances, and shall assign and transfer all associated permits, licenses and permissions to the City. If a water extension was permitted for the same or similar project, the City shall receive final approval from the permitting agency. In certain circumstances as approved by the City, activation of services on portion(s) of the New Infrastructure may be permitted after partial certification(s) completion and approval(s).
17. The conveyance, assignment or transfer of (1) all permits, licenses or other permissions, and (2) all property and assets to the City, including but not limited to real or personal property, the New Infrastructure and its appurtenances, easements, rights of way or encroachments, (1) and (2) collectively hereinafter referred to as "Required Conveyances," shall be in form as approved by the City's legal counsel, and unless specifically excepted by the City Attorney, shall be in form proper for recording in the appropriate public registry. The conveyance of real property shall be in the form of a fee simple deed and without encumbrance as approved by the City's legal counsel. The Developer shall cause all affiliates or other third parties or entities having an ownership interest in the New Infrastructure or the Property to join the Required Conveyances, as reasonably determined by the City to be necessary to convey full title to the New Infrastructure and Required Conveyances to the City. With the execution hereof, Developer and City specifically agree that the New Infrastructure shall remain personal property, and shall not become a part of the real property, regardless of whether or not the New Infrastructure is permanently affixed to the real property comprising the Property.
18. The Developer shall provide a written release of the City's interest in the Required Conveyances (in form approved by the City Attorney) from any and all liens or other legal interests held by lenders, vendors or other third parties. The release(s) must be delivered in form for recording in the appropriate public registry, and must be received by the City in conjunction with the City's receipt of the Required Conveyances.
19. To the fullest extent allowed by law, and regardless of the approval(s) of any document(s) by the City's legal counsel, the Developer shall indemnify and hold the City harmless from all actions, causes and claims whatsoever against the City by any persons, firms, and corporations whatsoever relating in any manner to this Agreement (including but not limited to damages to persons or property related to construction and/or installation of the New Infrastructure) or the Required Conveyances. Without limiting the Developer's obligations under this paragraph in any manner, the Developer shall defend any and all claims, causes or actions whatsoever regarding the City's title or ownership in any of the Required Conveyances.
20. Developer shall guarantee the accepted and dedicated New Infrastructure to be free of defects in materials and workmanship and to be properly functioning in all respects for a period of one calendar year from the date of acceptance by the City. During this year of guarantee, Developer shall correct, or have corrected, any defects that may develop in material, equipment, or workmanship. Should Developer fail to correct defects within a reasonable period of time after being notified, as determined in good faith by the City Engineer or designee, the City may proceed to correct defects and Developer shall be liable for the City's expense in doing so. It shall be the Developer's responsibility to attend, or to provide an authorized representative to attend, a warranty inspection with the City prior to the expiration of said warranty period.
21. Before the issuance of final acceptance, the Developer or Engineer shall schedule a project closeout meeting with the City. The Developer or Engineer shall submit to the City, not later than the start of the project closeout

meeting, all required closeout documents, including but not limited to recorded easement plats, warranty deeds, affidavits of lien waiver, as-built drawings with georeferenced infrastructure data, final walk-through inspection punch list and evidence of completion of said punch list, utility extension agreements, fixed asset evaluation form and infrastructure testing results. The City shall be under no obligation to [and in the absence of extraordinary circumstances will not] activate any services before receipt of all required documentation. Partial receipt shall be treated as an incomplete project closeout and no services shall be activated. A project closeout form shall be completed and executed by the Developer or by an authorized representative of the Developer and the City for each project. If the project described in this utility extension agreement is divided into phases, a project closeout form shall be executed for each phase prior to issuance of final acceptance. For purposes of this paragraph, and notwithstanding any other provision of this agreement, every required document shall be considered material, and "substantial compliance" shall not apply.

22. Once all items are complete, City staff shall submit the project to City Council for formal acceptance during a regularly scheduled meeting. The City shall issue a formal "Letter of Acceptance" upon acceptance by City Council to the Developer for the project. The City shall incorporate the accepted system as an integral part of its utility system and shall furnish service therefrom in accordance with the rules, regulations, rates, and policies established for its customers.
23. There shall be no intended nor incidental third-party beneficiaries of this Agreement.
24. This Agreement may not be assigned by the Developer without the express written consent of the City. Any assignment without the express written consent of the City shall be void. Any assignment approved by the City shall be in form approved by the City's legal counsel. Such consent by the City and approval by the City's legal counsel shall be for the sole and exclusive benefit and reliance of the City, and shall not be relied upon by the Developer nor any third party as to the validity or legal effect of an assignment.
25. All inspections of the New Infrastructure performed by the City shall be for the sole and exclusive benefit and reliance of the City. The inspection, approval and acceptance of the New Infrastructure shall not be deemed a warranty or guarantee upon which any person or entity can rely that the construction of the extension was done in a workmanlike manner, or was completed in accordance with the construction contract documents, with standards of the profession in and around Hendersonville, North Carolina, or in accordance with the applicable federal, State, or local laws, rules or regulations.
26. This agreement is executed in the State of North Carolina, and shall be construed in accordance with the laws of the State of North Carolina. Both parties submit their persons to the jurisdiction of the Courts for North Carolina. Exclusive venue for any action brought in connection with this agreement, its interpretation and breach shall be in the courts for Henderson County, North Carolina.
27. This Agreement may be recorded in the Henderson County Register of Deeds Office at the option of the City.

The remainder of this page is left blank intentionally.

PLEASE BE ADVISED: The City shall not allow the activation of any water or sewer services until the City receives partial certification approval or final approval from the permitting agency and shall not allow the issuance of any certificates of occupancy until the City deems the project complete.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

DEVELOPER:

BY: Richard Eugene Lance (SEAL)
Richard Eugene Lance

BY: Jennifer Michelle Lance (SEAL)
Jennifer Michelle Lance

BY: Ronald Page Lance (SEAL)
Ronald Page Lance

BY: Christopher Page Lance (SEAL)
Christopher Page Lance

BY: Tonya Lance Rice (SEAL)
Tonya Lance Rice

**Jackson Family Developers, LLC, a North Carolina
Limited Liability Company**

BY: [Signature] (SEAL)
Manager

Print name of Manager signing: Kenneth G. Jackson Sr.

THE CITY OF HENDERSONVILLE:

BY: _____ (SEAL)
John F. Connet, City Manager

STATE OF North Carolina COUNTY OF Henderson

I, Tiffany R. Swanger, (printed name of notary) a Notary Public in and for the State and County aforesaid, do hereby certify that **Christopher Page Lance** personally appeared before me acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal, this 18th day of April, 2022

My commission expires 2/28/23

Tiffany R. Swanger
Notary Public Signature

(OFFICIAL SEAL)

2/28/23

STATE OF North Carolina COUNTY OF Henderson

I, Tiffany R. Swanger, (printed name of notary) a Notary Public in and for the State and County aforesaid, do hereby certify that **Tonya Lance Rice** personally appeared before me acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal, this 18th day of April, 2022

My commission expires 2/28/23

Tiffany R. Swanger
Notary Public Signature

(OFFICIAL SEAL)

2/28/23

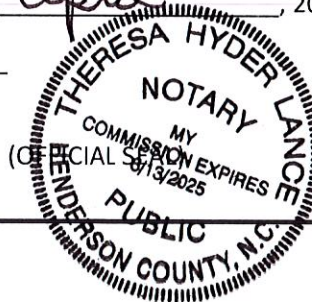
STATE OF NORTH CAROLINA COUNTY OF HENDERSON

I, Theresa Hyder Lance, (printed name of notary) a Notary Public in and for the State and County aforesaid, do hereby certify that Kenneth G. Jackson, **Manager for Jackson Family Developers, LLC**, personally appeared before me acknowledged the due execution of the foregoing instrument on behalf of Jackson Family Developers, LLC.

WITNESS my hand and official seal, this 14th day of April, 2022

My commission expires 6-13-2025

Theresa Hyder Lance
Notary Public Signature



STATE OF NORTH CAROLINA, COUNTY OF HENDERSON

I, _____, (printed name of notary) a Notary Public in and for the State and County aforesaid, do hereby certify that **John F. Connet**, personally appeared before me and, being duly sworn, stated that he is City Manager of the City of Hendersonville, North Carolina, and that he executed and acknowledged the foregoing instrument on behalf of the City of Hendersonville pursuant to order of the City Council of said City and that the instrument is the act and deed of the City of Hendersonville.

WITNESS my hand and official seal, this _____ day of _____, 20____

My commission expires _____

Notary Public Signature

(OFFICIAL SEAL)

CITY OF HENDERSONVILLE
UTILITY AVAILABILITY
Heritage Park

Section 5, Item I.

Buncombe County
Henderson County

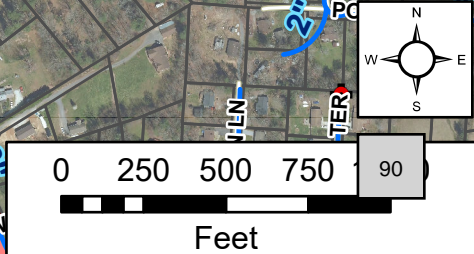
Heritage Park
PINs: 9653-23-3576 & 9653-34-7573
Fletcher Town
Town Manager: Mark Biberdorf
Fletcher Town Fire District
Fire Chief: Greg Garland

- Sewer Layers**
- Gravity Main
 - Public Gravity Main
 - Public Force Main
 - Abandoned
- Water Layers**
- Fire Hydrants
 - City Fire Hydrant
 - Water Main
 - City Water Main
 - Private Fire Line
 - Abandoned Water Main
- Road Layers**
- State Maintained Road
 - Non-State Maintained Road



The City of Hendersonville makes every effort to confirm the accuracy of this information; however, it does not warrant or guarantee that any information provided is accurate or current.

Z:\GIS\Water_Sewer_Dept\WS_GIS_Projects\Water_Sewer_Availability_Maps





CITY OF HENDERSONVILLE
AGENDA ITEM SUMMARY

SUBMITTER: Brendan Shanahan, Civil Engineer IV **MEETING DATE:** May 5, 2022

AGENDA SECTION: CONSENT **DEPARTMENT:** Engineering

TITLE OF ITEM: Utility Extension Agreement for the Providence Walk Subdivision – *Brendan Shanahan, Engineering*

SUGGESTED MOTION(S): I move that City Council approve the Resolution authorizing the City Manager to enter into a Utility Extension Agreement with Providence Walk, LLC., and First Victory, Inc. for the Providence Walk Subdivision as presented and recommended by staff.

SUMMARY:
The Providence Walk Subdivision located off North Main Street in Henderson County proposes to extend the City's water distribution system and wastewater collection system to serve said expansion. The attached Utility Extension Agreement (UEA) outlines the water line and gravity sewer line extension process and assigns responsibilities to the Developer and City. We welcome any questions that you may have.

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: 21122 **PETITION NUMBER:** N/A

ADDITIONAL PETITION NUMBER: N/A

PETITIONER NAME: N/A

ATTACHMENTS:

Utility Extension Agreement – Providence Walk Subdivision

Map showing Providence Walk Subdivision parcel

Resolution #__-____

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO
AUTHORIZE THE CITY MANAGER TO ENTER INTO A UTILITY EXTENSION
AGREEMENT WITH PROVIDENCE WALK, LLC AND FIRST VITORY, INC. FOR THE
HERITAGE PARK SUBDIVISION**

WHEREAS, the City of Hendersonville owns, operates, and maintains a water distribution system a gravity sewer system to serve customers throughout Henderson County; and

WHEREAS, residential, commercial, and industrial developments often require public water service as a part of their development projects; and

WHEREAS, the Developer extends public water and gravity sewer lines to their site, which upon completion and acceptance, are provided to the City to own, operate, and maintain; and

WHEREAS, the City requires a Utility Extension Agreement to be executed to establish requirements of both the Developer and the City for the water and sewer line extension process; and

WHEREAS, First Victory, Inc., the “Developer” and Providence Walk, LLC, the “Owner”, will enter into a Utility Extension Agreement with the City to provide water and sewer services to the Providence Walk Subdivision.

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

1. The Utility Extension Agreement with First Victory, Inc., the “Developer” and Providence Walk, LLC., the “Owner” to provide water service to the Providence Walk Subdivision is approved, as presented.
2. City Manager is authorized to execute the Utility Extension Agreement, and to approve and execute amendments to the Utility Extension Agreement in the future provided such amendments do not impose a financial obligation upon the City.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 5th day of May 2022.

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

Prepared by and return to: Daniel Heyman, Staff Attorney, City of Hendersonville, in the City Box

UTILITY EXTENSION AGREEMENT

THIS AGREEMENT, Made and entered into this ____ day of _____, 20____, by and between the **CITY OF HENDERSONVILLE**, a North Carolina municipal corporation, situate in Henderson County, herein referred to as the "City", and **PROVIDENCE WALK, LLC**, a North Carolina limited liability company, and **FIRST VICTORY, INC.**, a North Carolina corporation, collectively herein referred to as "Developer,"

WITNESSETH:

THAT WHEREAS, Developer is the owner of, and is desirous of developing and improving, a tract of land situated in Henderson County, State of North Carolina, described as follows:

Consisting of the following parcels: (1) the parcel consisting of +/- 0.726 acres, and being all of that real property described in that deed recorded in Deed Book 3774 at page 632, Henderson County registry, having a REID of 114559; (2) the parcel consisting of +/- 0.1.01 acres, and being all of that real property described in that deed recorded in Deed Book 3797 at page 587, Henderson County registry, having a REID of 109506; (3) the parcel consisting of +/- 0.84 acres, and being all of that real property described in that deed recorded in Deed Book 3792 at page 534, Henderson County registry, having a REID of 101737, (4) the parcel consisting of +/- 4.260 acres, and being all of that real property described in that deed recorded in Deed Book 3774 at page 632, Henderson County registry, having a REID of 1017874; and (5) the parcel consisting of +/- 12.85 acres, and being all of that real property described in that deed recorded in Deed Book 3774 at page 632, Henderson County registry, having a REID of 1017895, all of the foregoing parcels collectively hereinafter referred to as the "Property"; and

WHEREAS, Developer has submitted an application for the development of a project known as Providence Walk (project number 21122); and

WHEREAS, in the process of such development and improvement, Developer is desirous of constructing water infrastructure and/or sanitary sewer infrastructure to and on said tract(s) of land, for which the City requires that

the Developer enter into a utility extension agreement with the City, said water and/or sewer infrastructure to consist of the following:

Being and consisting of: 1) Water Service Extension consisting of +/- 1,290 lineal feet of 2" water line (PEX), +/- 1,250 lineal feet of 6" water line (ductile iron pipe/CL 350), +/- 950 lineal feet of 8" water line (ductile iron pipe/CL 350), and associated valves, meters, hydrants, and other appurtenances, running southeasterly from the intersection of a proposed new drive and N Main St (SR-1503) and connecting to an existing 12" water main along N Main St; and 2) and a Sanitary Service Extension consisting of +/- 3,045 lineal feet of 8" sewer line (PVC and ductile iron pipe), 21 manholes, and related appurtenances running westerly and then within the project confines from a proposed connection to manhole #5359 which is presently along an existing 8" sewer main along Strick Garden Ln, and being more particularly shown and described on those construction plans and specifications, sealed by the engineer on March 15, 2022 and bearing project number FVC011, prepared by High Country Engineering, P.C., a Civil Engineering firm, said plans being incorporated herein by reference. 1) and 2) collectively are collectively hereinafter referred to as the "New Infrastructure". It is understood and agreed that the New Infrastructure may be modified or amended from and after the date of this Agreement as may be required to meet the standards of the City of Hendersonville. As used herein, "New Infrastructure" shall be deemed to include any and all of any such modifications and amendments.; and

WHEREAS, the Developer has received zoning approval from the designated governing body for such development and improvement on the Property; and as used herein, New Infrastructure shall be deemed to include changes to the New Infrastructure made pursuant to amendments to the Plans which have been approved by the City; and

WHEREAS, the Property is located within the City's municipal boundaries; and

WHEREAS, Developer desires to have the completed New Infrastructure connected to the City's municipal water system and/or sanitary sewer system and made an integral portion thereof; and

WHEREAS, the City will permit said system(s) to be connected to the municipal system(s) under the terms and conditions heretofore established and agreed upon between the parties and specifically in conformance with the requirements of the most recent extension policy, most recent water and sewer standard construction specifications and details, and the City's Code of Ordinances currently in force.

NOW, THEREFORE, in consideration of the mutual benefits which will result to the parties in carrying out the terms of this Agreement, it is agreed as follows:

1. Developer shall, at Developer's own expense, employ a North Carolina registered and licensed professional engineer ("Engineer") to complete design and permitting of the proposed New Infrastructure in conformance with NCAC Title 15A Subchapter 18C (water) and NCAC Title 15A Subchapter 02T(sanitary sewer), the City's water and sewer standard construction specifications and details, and the City water and/or sewer Master Plan(s).
2. Developer shall require the Engineer to submit plans, reports, technical specifications, fees, permit applications, and any other items as required and approvable by the City ("Required Documents"). The Engineer shall disclose all proposed changes in the approved construction plans to the City in writing. If proposed changes are deemed by the City to be "significant" in nature, the City may require the Engineer to resubmit plans for re-permitting. The determination of whether a change is deemed to be significant shall be

in the sole and absolute discretion of the City, and the Developer agrees to be bound thereby. This will require written approval by the City prior to re-submitting to the permitting agency or before proceeding with changes, even if permitting agency re-submittal is not required. City approval of a utility extension is subject to expiration should construction not be completed after a period of two years from the date of approval. Once the Required Documents have been approved by the City, they shall be deemed to be incorporated herein by reference as an amendment to this Agreement to indicate the Developers construction obligations under this Agreement.

3. The City will perform construction inspection during installation of the New Infrastructure and upon project completion submit written certification that the project was completed in accordance with the approved plans and specifications as required by NCAC Title 15A Subchapter 18C (water) and NCAC Title 15A Subchapter 02T (sanitary sewer). Water and Sewer inspection fees shall be in accordance with the adopted City Fee Schedule as of the date of this agreement. Fees will be paid by the Developer upon certification and acceptance of the New Infrastructure, with amounts due being based on length of lines inspected, certified and accepted.
4. The Developer shall, at his or her own expense, furnish and transfer to the City all on-site and off-site easements, rights-of-way, and real property required for access to and perpetual maintenance and operation of the New Infrastructure and its appurtenances in accordance with the terms of this Agreement as provided herein below.

Developer will be required to enter into the City's standard Deed of Dedication and Conveyance With Associated Easements for conveyance of the New Infrastructure and on-site easements, as amended. Further Developer will be required to use the City's standard Utility Infrastructure Easement Agreement when securing the necessary off-site right of way for the operation and maintenance of the New Infrastructure. For the avoidance of doubt, both standard forms permit use of the easements for the future installation of water, sewer and stormwater lines, and their associated appurtenances and accessories, in addition to the New Infrastructure, by or on behalf of the City. The City shall provide a copy of these standard forms upon request by the Developer.

5. Developer shall, at his or her own cost and expense, furnish all materials and all equipment and perform all the work necessary to complete the construction of the New Infrastructure described in the plans and specifications as approved by the City's authorized representative and permitting agency.
6. The installation and construction of the New Infrastructure shall be performed by a reputable and responsible Contractor possessing a valid North Carolina Public Utility Contractor's License directly related to the installation of the New Infrastructure issued by the North Carolina Licensing Board for General Contractors. As used herein, a "responsible Contractor" shall mean one possessing the requisite knowledge, experience, and financial resources to complete the construction of the New Infrastructure in accordance with the plans and specifications within the time allotted.
7. The Engineer shall contact the City prior to the start of construction in order to schedule a preconstruction conference between the Developer, Contractor, Engineer, and City staff. This request should be made at least seven (7) days in advance of the anticipated starting date. Developer or Engineer shall receive a written notice to proceed (NTP) from the City before commencing with construction. If construction is anticipated to be

greater than sixty (60) days, a monthly progress meeting shall be scheduled once every thirty (30) days. The date and time of the monthly progress meeting shall be established during the preconstruction conference.

8. Developer shall submit the name, address and the Public Utility Contractor's License Identification Number of the proposed Contractor to the City prior to the preconstruction meeting. The City may investigate the validity of the Contractor's license and the Contractor's status as a responsible Contractor by methods including but not limited to contacting the owners of past projects for which the Contractor furnished work in order to obtain reference information
9. City staff will be assigned for the express purpose of periodic construction observation and inspection. The City's construction inspector(s) shall have the authority to report all discrepancies identified in all phases of construction to the Engineer regarding conformance with the approved construction drawings and specifications. This report shall in no way relieve the Developer of his or her obligation to engage a professional engineer to perform construction inspection and coordinate construction.
10. During construction, no deviations from the approved plans and specifications shall be allowed without the prior express written approval of the City and permitting agency if deemed necessary by the City.
11. The City Engineer, or authorized representative, shall be authorized to resolve disagreements between Developer's Contractor(s), and the City's construction inspector(s) regarding conformance with approved plans and/or specifications.
12. Upon completion of construction, the Developer shall cause the Engineer to arrange for a final inspection to be performed jointly by the Engineer, the contractor, and the City's construction inspector to determine if the project is acceptable to the City. At this time, a draft as-built shall be submitted to the City. If the project is not immediately acceptable, any deficiencies shall be noted in a written report (punch list) prepared by the City. This report shall be transmitted to the responsible parties. It shall be the responsibility of the Developer to correct any such deficiencies and arrange for a re-inspection of the system.
13. As part of the final inspection process for sewer collection systems, Developer shall satisfactorily complete the following as described in the most recent water and sewer standard construction specifications and details: air test, manhole vacuum tests, and mandrel deflection test. Video of the new sanitary sewer collection system by means of closed-circuit television (CCTV) will be performed by the City. All testing shall be certified and all certifications, along with the related data and any video of the sewer system, shall be submitted to the City before final acceptance of the project is granted by the City.
14. As part of the final inspection process for water distribution systems, Developer shall satisfactorily complete the following: pressure test lines, bacteriological sampling performed by a certified laboratory. The City's certified laboratory may be utilized. All testing shall be certified and all certifications, along with related data, shall be submitted to the City before final acceptance of the project is granted by the City.
15. Once all deficiencies are corrected and the project is deemed acceptable to the City, the Developer shall cause the Engineer to submit as-builts in formats acceptable to the City. The Engineer shall also submit any easements required for the New Infrastructure and any deeds necessary to convey ownership to the City. The

Developer shall be responsible for acquiring easements from any third parties owning property over which any portion of the New Infrastructure is constructed, said easements to be titled in the name of the City, using forms to be provided by the City.

16. Prior to the activation of services on the newly constructed New Infrastructure, Developer shall convey unencumbered title and ownership to the City, of the New Infrastructure and its appurtenances, and shall assign and transfer all associated permits, licenses and permissions to the City. If a water extension was permitted for the same or similar project, the City shall receive final approval from the permitting agency. In certain circumstances as approved by the City, activation of services on portion(s) of the New Infrastructure may be permitted after partial certification(s) completion and approval(s).
17. The conveyance, assignment or transfer of (1) all permits, licenses or other permissions, and (2) all property and assets to the City, including but not limited to real or personal property, the New Infrastructure and its appurtenances, easements, rights of way or encroachments, (1) and (2) collectively hereinafter referred to as "Required Conveyances," shall be in form as approved by the City's legal counsel, and unless specifically excepted by the City Attorney, shall be in form proper for recording in the appropriate public registry. The conveyance of real property shall be in the form of a fee simple deed and without encumbrance as approved by the City's legal counsel. The Developer shall cause all affiliates or other third parties or entities having an ownership interest in the New Infrastructure or the Property to join the Required Conveyances, as reasonably determined by the City to be necessary to convey full title to the New Infrastructure and Required Conveyances to the City. With the execution hereof, Developer and City specifically agree that the New Infrastructure shall remain personal property, and shall not become a part of the real property, regardless of whether or not the New Infrastructure is permanently affixed to the real property comprising the Property.
18. The Developer shall provide a written release of the City's interest in the Required Conveyances (in form approved by the City Attorney) from any and all liens or other legal interests held by lenders, vendors or other third parties. The release(s) must be delivered in form for recording in the appropriate public registry, and must be received by the City in conjunction with the City's receipt of the Required Conveyances.
19. To the fullest extent allowed by law, and regardless of the approval(s) of any document(s) by the City's legal counsel, the Developer shall indemnify and hold the City harmless from all actions, causes and claims whatsoever against the City by any persons, firms, and corporations whatsoever relating in any manner to this Agreement (including but not limited to damages to persons or property related to construction and/or installation of the New Infrastructure) or the Required Conveyances. Without limiting the Developer's obligations under this paragraph in any manner, the Developer shall defend any and all claims, causes or actions whatsoever regarding the City's title or ownership in any of the Required Conveyances.
20. Developer shall guarantee the accepted and dedicated New Infrastructure to be free of defects in materials and workmanship and to be properly functioning in all respects for a period of one calendar year from the date of acceptance by the City. During this year of guarantee, Developer shall correct, or have corrected, any defects that may develop in material, equipment, or workmanship. Should Developer fail to correct defects within a reasonable period of time after being notified, as determined in good faith by the City Engineer or designee, the City may proceed to correct defects and Developer shall be liable for the City's expense in doing

so. It shall be the Developer's responsibility to attend, or to provide an authorized representative to attend, a warranty inspection with the City prior to the expiration of said warranty period.

21. Before the issuance of final acceptance, the Developer or Engineer shall schedule a project closeout meeting with the City. The Developer or Engineer shall submit to the City, not later than the start of the project closeout meeting, all required closeout documents, including but not limited to recorded easement plats, warranty deeds, affidavits of lien waiver, as-built drawings with georeferenced infrastructure data, final walk-through inspection punch list and evidence of completion of said punch list, utility extension agreements, fixed asset evaluation form and infrastructure testing results. The City shall be under no obligation to [and in the absence of extraordinary circumstances will not] activate any services before receipt of all required documentation. Partial receipt shall be treated as an incomplete project closeout and no services shall be activated. A project closeout form shall be completed and executed by the Developer or by an authorized representative of the Developer and the City for each project. If the project described in this utility extension agreement is divided into phases, a project closeout form shall be executed for each phase prior to issuance of final acceptance. For purposes of this paragraph, and notwithstanding any other provision of this agreement, every required document shall be considered material, and "substantial compliance" shall not apply.
22. Once all items are complete, City staff shall submit the project to City Council for formal acceptance during a regularly scheduled meeting. The City shall issue a formal "Letter of Acceptance" upon acceptance by City Council to the Developer for the project. The City shall incorporate the accepted system as an integral part of its utility system and shall furnish service therefrom in accordance with the rules, regulations, rates, and policies established for its customers.
23. There shall be no intended nor incidental third-party beneficiaries of this Agreement.
24. This Agreement may not be assigned by the Developer without the express written consent of the City. Any assignment without the express written consent of the City shall be void. Any assignment approved by the City shall be in form approved by the City's legal counsel. Such consent by the City and approval by the City's legal counsel shall be for the sole and exclusive benefit and reliance of the City, and shall not be relied upon by the Developer nor any third party as to the validity or legal effect of an assignment.
25. All inspections of the New Infrastructure performed by the City shall be for the sole and exclusive benefit and reliance of the City. The inspection, approval and acceptance of the New Infrastructure shall not be deemed a warranty or guarantee upon which any person or entity can rely that the construction of the extension was done in a workmanlike manner, or was completed in accordance with the construction contract documents, with standards of the profession in and around Hendersonville, North Carolina, or in accordance with the applicable federal, State, or local laws, rules or regulations.
26. This agreement is executed in the State of North Carolina, and shall be construed in accordance with the laws of the State of North Carolina. Both parties submit their persons to the jurisdiction of the Courts for North Carolina. Exclusive venue for any action brought in connection with this agreement, its interpretation and breach shall be in the courts for Henderson County, North Carolina.
27. This Agreement may be recorded in the Henderson County Register of Deeds Office at the option of the City.

PLEASE BE ADVISED: The City shall not allow the activation of any water or sewer services until the City receives partial certification approval or final approval from the permitting agency and shall not allow the issuance of any certificates of occupancy until the City deems the project complete.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

DEVELOPER: PROVIDENCE WALK, LLC,
a North Carolina Limited Liability Company

THE CITY OF HENDERSONVILLE

BY: _____ (SEAL)
(signature)

BY: _____ (SEAL)
John F. Connet, City Manager

Printed name: _____
Title: _____

DEVELOPER: FIRST VICTORY, INC.,
a North Carolina Corporation

BY: _____ (SEAL)
(signature)

Printed name: _____
Title: _____

STATE OF _____ COUNTY OF _____

I, _____, (printed name of notary) a Notary Public in and for the State and County aforesaid, do hereby certify that _____, as _____ for **Providence Walk, LLC**, personally appeared before me acknowledged the due execution of the foregoing instrument on behalf of Providence Walk, LLC.

WITNESS my hand and official seal, this _____ day of _____, 20____

My commission expires _____

Notary Public Signature

(OFFICIAL SEAL)

STATE OF _____ COUNTY OF _____

I, _____, (printed name of notary) a Notary Public in and for the State and County aforesaid, do hereby certify that _____, as _____ for **First Victory, Inc.**, personally appeared before me acknowledged the due execution of the foregoing instrument on behalf of First Victory, Inc.

WITNESS my hand and official seal, this _____ day of _____, 20____

My commission expires _____

Notary Public Signature (OFFICIAL SEAL)

STATE OF NORTH CAROLINA, COUNTY OF HENDERSON

I, _____, (printed name of notary) a Notary Public in and for the State and County aforesaid, do hereby certify that **John F. Connet**, personally appeared before me and, being duly sworn, stated that he is City Manager of the City of Hendersonville, North Carolina, and that he executed and acknowledged the foregoing instrument on behalf of the City of Hendersonville pursuant to order of the City Council of said City and that the instrument is the act and deed of the City of Hendersonville.

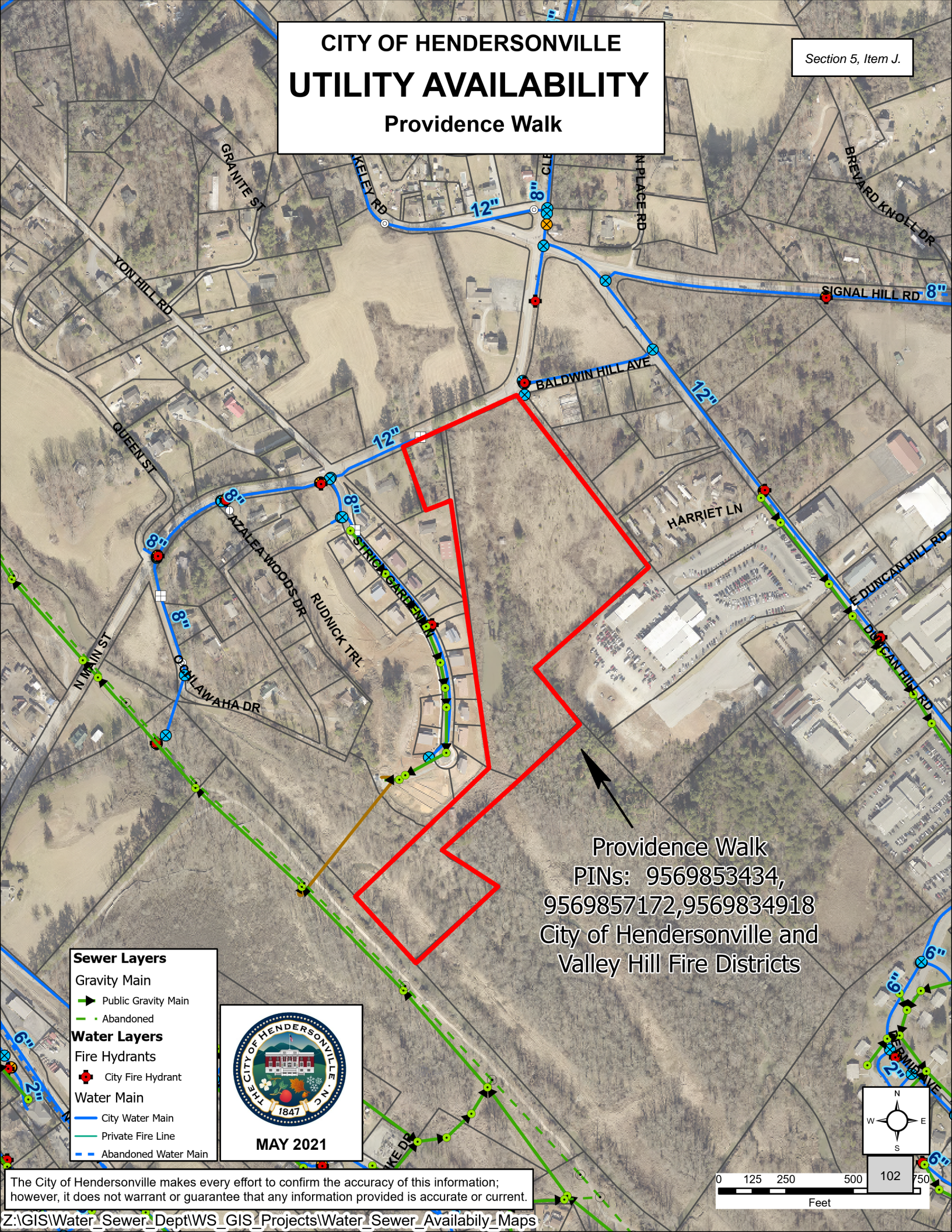
WITNESS my hand and official seal, this _____ day of _____, 20____

My commission expires _____

Notary Public Signature (OFFICIAL SEAL)

CITY OF HENDERSONVILLE
UTILITY AVAILABILITY
Providence Walk

Section 5, Item J.



Providence Walk
PINs: 9569853434,
9569857172,9569834918
City of Hendersonville and
Valley Hill Fire Districts

Sewer Layers

Gravity Main

- Public Gravity Main
- Abandoned

Water Layers

Fire Hydrants

- City Fire Hydrant

Water Main

- City Water Main
- Private Fire Line
- Abandoned Water Main



The City of Hendersonville makes every effort to confirm the accuracy of this information; however, it does not warrant or guarantee that any information provided is accurate or current.



CITY OF HENDERSONVILLE

AGENDA ITEM SUMMARY

SUBMITTER:

Drew Finley

MEETING DATE:

May 5, 2022

AGENDA SECTION:

CONSENT

DEPARTMENT:

WATER/SEWER

TITLE OF ITEM:

Selection of ADW’s Proposal for Phase I of the City Hall and City Operations Facilities Renovations Project – *Drew Finley, Assistant Utilities Director*

SUGGESTED MOTION(S): I move that City Council adopt the Resolution Accepting ADW’s Proposal For Architectural And Engineering Services for Phase I of the City Hall and City Operations Facilities Renovations Project in the Not to Exceed amount of \$279,000.

SUMMARY: The Renovations are needed for both the City Hall building and the City Operations Facility. ADW Architects recently completed a space needs analysis study for the City that included an evaluation of the City’s physical space needs. City staff conducted a qualifications-based selection process in accordance with the provisions of G.S.143-64.31 and determined that ADW Architects is the most qualified firm to perform the architectural and engineering services required for Phase I of the project. Staff is now requesting that City Council accept ADW’s proposal to perform this work.

BUDGET IMPACT:

\$279,000 Not to Exceed

Is this expenditure approved in the current fiscal year budget?

Yes

If no, describe how it will be funded.

N/A

ATTACHMENTS:

Resolution

Architectural/Engineering Design Proposal

Resolution #R-22-55

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL ACCEPTING
ADW’S PROPOSAL FOR ARCHITECTURAL AND ENGINEERING SERVICES FOR
PHASE I OF THE CITY HALL AND CITY OPERATIONS FACILITIES RENOVATIONS
PROJECT**

WHEREAS City Council has determined that renovations are needed for both the City Hall building and the City Operations Facility; and

WHEREAS ADW Architects recently completed a space needs analysis study for the City that included an evaluation of the City’s physical space need; and

WHEREAS City staff conducted a qualifications-based selection process in accordance with the provisions of G.S.143-64.31 to determine the most qualified firm to perform the architectural and engineering services required for Phase I of the project as described in the attached proposal from ADW Architects; and

WHEREAS, City staff recommends that ADW Architects be determined as the most qualified firm to perform the architectural and engineering services required for Phase I of the project.

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

1. ADW Architects is declared to be the most qualified firm to perform the architectural and engineering services required for Phase I of the project.
2. The City of Hendersonville hereby accepts the attached proposal from ADW Architects to perform architectural and engineering services for Phase I of the City Hall and City Operations Facilities Renovations project and finds that ADW Architects is the most qualified firm.
3. The City Manager and City Attorney are hereby authorized to negotiate and execute a final contract with ADW Architects for architectural and engineering services in connection with this project not to exceed \$279,000.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 5th day of May 2022.

Attest: _____
Barbara G. Volk, Mayor, City of Hendersonville

Angela L. Reece, City Clerk

Approved as to Form:

Angela S. Beeker, City Attorney

April 8, 2022

Drew Finley
 Assistant to the Utilities Director
 City of Hendersonville, NC
 145 Fifth Avenue East
 Hendersonville, NC 28792

Re: Architectural & Engineering Services Proposal
 City Hall and City Operations Facilities Renovations project – Phase 1 work

Dear Drew:

ADW Architects is pleased to provide you this proposal for Architectural and Engineering Services needed for the City Hall and City Operations Facilities Renovations project – Phase 1 work. We will provide Architectural and Engineering Basic Services as per the American Institute of Architects Standard Form of Agreement Between Owner and Architect B101-2017 with City of Hendersonville Amendments, with the exception that we will be providing limited Schematic Design Phase Services and combined Design Development/Construction Documents Phase Services.

Professional Cost Estimating Services are not included as Basic Services in the B101-2017 Contract. They are considered Additional Services with an Additional Fee. We will modify the Contract such that we can include these Services with-in our Basic Services Fee.

Our Fee is based on the design of a portion of the renovations outlined in the Study for both the existing City Hall and the City Operations Facility and our recent project scope meeting held on March 25, 2022. This Phase 1 Scope of work will include the following areas of renovation in each building;

City Hall

Ground floor Renovations (first floor)

City Operations Facility

First floor renovations
 Second floor Engineering area renovations
 Second floor IT/Future Engineering renovations

Our Basic Services Lump Sum Fee for this project, including all Phases of work, would be \$264,000. Our Basic Services Fee would be broken out as follows;

Architectural Services	\$183,000
Structural Engineering	\$ 15,000
Mechanical, Electrical & Plumbing Engineering	\$ 60,000
Professional Cost Estimating Services	\$ 6,000

As an Additional Service, we can provide a Design Study for installing solar panels in the City Hall parking lot and the City Operations Center roof or parking lot for \$15,000. A breakout of this fee is as follows;

Electrical Engineering - \$ 5,000
Structural Engineering - \$ 7,500
Professional Cost Estimating Services - \$ 500
Architectural - \$ 2,000

Please note that the Structural Engineer will need the City to provide a bucket truck, lift and/or other means of reaching the roof structure of the City Operations Facility in order for them to review and measure the existing metal building structural members. The cost for the means to reach the structure have not been included in this proposal.

If further Design Services are needed for implementation of findings in the Study, those Services could be provided for an Additional Services Fee.

The following Project expenses would be considered reimbursable. They would be invoiced for only as needed, and they are not included in the Fee above.

- drawing printing
- project manual printing (specifications)
- postage and handling of permitting and bid documents only
- newspaper ads for bidding
- mounting, foam core, etc. for owner requested presentation drawings
- FedEx or rush delivery
- regulatory application fees, filing fees, review fees, permit fees, etc.

The following Services will be provided by the Owner, as they are either related to the Owner's existing buildings or they are required third party inspections.

- geotechnical engineering
- independent construction materials & compaction testing
- special inspections required by the NC Building Code

The following Services are not included in the fee.

- furniture design/selection/procurement
- environmental assessments/engineering, impact statements if required

Because of our experience completing these types of projects for other Municipalities, we believe this Fee is commensurate with the Professional Services that are needed to provide a successful project.

This Fee is based on the following Project Scope;

- 1- This Proposal is based on the Space Needs Study work previously completed for this project.
- 2- We will work with panelized wall systems manufacturers to design the interface of these systems with conventional construction materials and systems.

- 3- This Fee is based on using the traditional design/bid/build project delivery method.
- 4- This Fee includes implementation of some Sustainable Design Principles, but not LEED Certification Design Services.
- 5- This Fee is based on an 8 month construction duration. This Fee includes the following Construction Contract Administration site visits for the 8 month construction duration;
 - Architectural – Weekly site visits when substantial work is being done on-site. These visits will include written reports with photographs of job progress.
 - Structural Engineering – up to 3 site visits. These visits will include written reports.
 - MEP Engineering- up to 10 site visits. These visits will include written reports.

If the construction duration exceeds 8 months, we can provide Construction Contract Administration Site Visits as Additional Services on an hourly basis, per site visit basis, or a mutually agreed upon lump sum fee.

- 6- This Fee includes all meetings with the City Council to review the progress of the design. It also includes all Owner/Design Team meetings needed throughout the Design Phases of the project.
- 7- The Design for all special systems, such as Telecom/Data, CCTV, Security, Audio Visual, etc. will be provided by the Town and/or through Vendors hired directly by the Town.
- 8- The Fee is based on there being one Bidding Phase, where the renovation work for both buildings will be completed by the same General Contractor in one contract.

Our Consultants would be as follows;

Structural Engineering
STEWART
101 N. Tryon St., Suite 1400
Charlotte, N.C. 28202

Mechanical, Electrical & Plumbing Engineering
RN&M Engineers
94 Main Street
Canton, NC 28716

Professional Cost Estimator
R. M. Rutherford & Associates, Inc.
3328 Mill Pond Road
Charlotte, N.C. 28226

Drew, we appreciate the opportunity to provide this proposal. If you have any questions or concerns, or if we have misinterpreted your needed scope of services, please do not hesitate to contact us.

Sincerely,
ADW Architects



Jim Powell, AIA
Managing Principal
2815 Coliseum Centre Drive, Suite 500
Charlotte, NC 28217
jpowell@adwarchitects.com

Ashley Love, AIA, LEED AP
Executive Associate
2815 Coliseum Centre Drive, Suite 500
Charlotte, NC 28217
alove@adwarchitects.com



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: Angela Beeker, City Attorney **MEETING DATE:** May 5, 2022

AGENDA SECTION: CONSENT **DEPARTMENT:** Legal

TITLE OF ITEM: Adoption Uniform Guidance Policies – *Angela Beeker, City Attorney*

SUGGESTED MOTION(S):

I move City Council to adopt the *Resolution By The City Of Hendersonville City Council To Adopt Certain Policies To Comply With 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, And Audit Requirements For Federal Awards* as presented.

SUMMARY: As City Council is award, the City of Hendersonville receives assistance in the form of grants, awards, subgrants, subawards, and loans funded wholly or in part by federal funds. Federal funding necessitates the necessitates the adoption of certain policies required by 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, hereinafter “Uniform Guidance”. The following policies are presented for adoption by resolution of City Council in compliance with Uniform Guidance:

1. Conflict of Interest Policy Applicable to Contracts and Subawards of the City Of Hendersonville Funded In Whole or In Part With Federal Funds;
2. Policy of the City of Hendersonville City Council to Prohibit Discrimination in Programs and Services and in Activities Receiving Federal Financial Assistance (A Supplement to the Title Vi Plan);
3. Record Retention Policy: Documents Created or Maintained Pursuant to the ARP/CSLFRF Award
4. City of Hendersonville Property Management Policy for Real and Personal Property Purchased in Whole or in Part With Federal Funds;
5. Eligible Project Policy for the Expenditure of American Rescue Plan Act Of 2021 Coronavirus State and Local Fiscal Recovery Funds by the City of Hendersonville;
6. The City of Hendersonville Policy for Program Income Related to the Expenditure of Federal Funds;
7. The City of Hendersonville Policy for Allowable Costs and Cost Principles for Expenditure of Federal Funds;

City Council is requested to adopt the Resolution as presented.

ATTACHMENTS:

Resolution
Policies

RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO ADOPT CERTAIN POLICIES TO COMPLY WITH 2 CFR PART 200 UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

WHEREAS, the City of Hendersonville receives grants, subgrants, awards, subawards, and loans that are funded in whole or in part by federal funds; and;

WHEREAS, federal funding necessitates the adoption of certain policies required by 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, hereinafter “Uniform Guidance”; and

WHEREAS, City Council wishes to adopt the following policies in compliance with Uniform Guidance;

THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HENDERSONVILLE, NORTH CAROLINA that:

1. The following policies, attached hereto and incorporated by reference, hereinafter “Uniform Guidance Policies,” are hereby adopted as required by Uniform Guidance:
 - a. Conflict of Interest Policy Applicable to Contracts and Subawards of the City Of Hendersonville Funded In Whole or In Part With Federal Funds;
 - b. Policy of the City of Hendersonville City Council to Prohibit Discrimination in Programs and Services and in Activities Receiving Federal Financial Assistance (A Supplement to the Title Vi Plan);
 - c. Record Retention Policy: Documents Created or Maintained Pursuant to the ARP/CSLFRF Award
 - d. City of Hendersonville Property Management Policy for Real and Personal Property Purchased in Whole or in Part With Federal Funds;
 - e. Eligible Project Policy for the Expenditure of American Rescue Plan Act Of 2021 Coronavirus State and Local Fiscal Recovery Funds by the City of Hendersonville;
 - f. The City of Hendersonville Policy for Program Income Related to the Expenditure of Federal Funds;
 - g. The City of Hendersonville Policy for Allowable Costs and Cost Principles for Expenditure of Federal Funds;
2. The Uniform Guidance Conflict of Interest Policy for the City of Hendersonville adopted on December 3, 2020, is hereby repealed.
3. The City of Hendersonville Uniform Guidance Procurement Policy adopted on November 23, 2020 and amended on February 10, 2022, is ratified and approved.
4. To the extent permitted by law, the Uniform Guidance Policies shall be considered administrative policies which may be amended by the City Manager in consultation with the City Attorney. Amendments which must be approved by City Council under applicable law shall be brought to City Council for approval.

Adopted by the City Council of the City of Hendersonville, North Carolina on this _____ day of _____, 20____.

Section 5, Item L.

Attest:

Barbara G. Volk, Mayor, City of Hendersonville

Angela L. Reece, City Clerk

**CITY OF HENDERSONVILLE CONFLICT OF INTEREST POLICY
APPLICABLE TO CONTRACTS AND SUBAWARDS OF THE CITY OF HENDERSONVILLE
FUNDED IN WHOLE OR IN PART WITH FEDERAL FUNDS**

Section 5, Item L.

I. Scope of Policy

- a. Purpose of Policy. This Conflict of Interest Policy (“*Policy*”) establishes conflict of interest standards that (1) apply when the City of Hendersonville (“*City*”) enters into a Contract (as defined in Section II hereof) or makes a Subaward (as defined in Section II hereof), and (2) meet or exceed the requirements of North Carolina law and 2 C.F.R. § 200.318(c).
- b. Application of Policy. This Policy shall apply when the City (1) enters into a Contract to be funded, in part or in whole, by Federal Financial Assistance to which 2 C.F.R. § 200.318(c) applies, or (2) makes any Subaward to be funded by Federal Financial Assistance to which 2 C.F.R. § 200.318(c) applies. If a federal statute, regulation, or the terms of a financial assistance agreement applicable to a particular form of Federal Financial Assistance conflicts with any provision of this Policy, such federal statute, regulation, or terms of the financial assistance agreement shall govern.

II. Definitions

Capitalized terms used in this Policy shall have the meanings ascribed thereto in this Section II: Any capitalized term used in this Policy but not defined in this Section II shall have the meaning set forth in 2 C.F.R. § 200.1.

- a. “*COI Point of Contact*” means the individual identified in Section III(a) of this Policy.
- b. “*Contract*” means, for the purpose of Federal Financial Assistance, a legal instrument by which the City purchases property or services needed to carry out a program or project under a Federal award.
- c. “*Contractor*” means an entity or individual that receives a Contract.
- d. “*Covered Individual*” means a Public Officer, employee, or agent of the City.
- e. “*Covered Nonprofit Organization*” means a nonprofit corporation, organization, or association, incorporated or otherwise, that is organized or operating in the State of North Carolina primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes, excluding any board, entity, or other organization created by the State of North Carolina or any political subdivision of the State (including the City).
- f. “*Direct Benefit*” means, with respect to a Public Officer or employee of the City, or the spouse of any such Public Officer or employee, (i) having a ten percent (10%) ownership interest or other interest in a Contract or Subaward; (ii) deriving any income or commission directly from a Contract or Subaward; or (iii) acquiring property under a Contract or Subaward.
- g. “*Federal Financial Assistance*” means Federal financial assistance that the City receives or administers in the form of grants, cooperative agreements, non-cash contributions or donations of property (including donated surplus property), direct appropriations, food commodities, and other Federal financial assistance (except that the term does not include loans, loan guarantees, interest subsidies, or insurance).
- h. “*Immediate Family Member*” means, with respect to any Covered Individual, (i) a spouse, and parents thereof, (ii) a child, and parent thereof, (iii) a parent, and spouse thereof, (iv) a sibling, and spouse thereof, (v) a grandparent and grandchild, and spouses thereof, (vi) domestic partners and parents thereof, including domestic partners of any individual in (ii) through (v) of this definition; and (vii) any individual related by

blood or affinity whose close association with the Covered Individual is the equivalent relationship.

- i. *“Involved in Making or Administering”* means (i) with respect to a Public Official or employee, (a) overseeing the performance of a Contract or Subaward or having authority to make decisions regarding a Contract or Subaward or to interpret a Contract or Subaward, or (b) participating in the development of specifications or terms or in the preparation or award of a Contract or Subaward, (ii) only with respect to a Public Official, being a member of a board, commission, or other body of which the Public Official is a member, taking action on the Contract or Subaward, whether or not the Public Official actually participates in that action.
- j. *“Pass-Through Entity”* means a non-Federal entity that provides a Subaward to a Subrecipient to carry out part of a Federal program.
- k. *“Public Officer”* means an individual who is elected or appointed to serve or represent the City (including, without limitation, any member of the City Council), other than an employee or independent contractor of the City.
- l. *“Recipient”* means an entity, usually but not limited to a non-Federal entity, that receives a Federal award directly from a Federal awarding agency. The term does not include Subrecipients or individuals that are beneficiaries of the award.
- m. *“Related Party”* means (i) an Immediate Family Member of a Covered Individual, (ii) a partner of a Covered Individual, or (iii) a current or potential employer (other than the City) of a Covered Individual, of a partner of a Covered Individual, or of an Immediate Family Member of a Covered Individual.
- n. *“State”* means the State of North Carolina.
- o. *“Subaward”* means an award provided by a Pass-Through Entity to carry out part of a Federal or State award received by the Pass-Through Entity. It does not include payments to a contractor or payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
- p. *“Subcontract”* means mean any agreement entered into by a Subcontractor to furnish supplies or services for the performance of a Contract or a Subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.
- q. *“Subcontractor”* means an entity that receives a Subcontract.
- r. *“Subrecipient”* means an entity, usually but not limited to a non-Federal entity, that receives a subaward from a Pass-Through Entity to carry out part of a Federal award; but does not include an individual that is a beneficiary of such award. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.
- s. *“City”* has the meaning specified in Section I hereof.

III. COI Point of Contact.

- a. Appointment of COI Point of Contact. The City Attorney shall have primary responsibility for managing the disclosure and resolution of potential or actual conflicts of interest arising under this Policy. In the event that the City Attorney is unavailable or is unable to serve in such capacity, Staff Attorney shall assume

responsibility for managing the disclosure and resolution of conflicts of interest arising under this Section III(a). The individual with responsibility for managing the disclosure and resolution of potential or actual conflicts of interest under this Section III(a) shall be known as the “COI Point of Contact”.

- b. Distribution of Policy. The COI Point of Contact shall ensure that each Covered Individual receives a copy of this Policy.

IV. **Conflict of Interest Standards in Contracts and Subawards**. A given situation or set of facts may be a conflict of interest under State law, Federal law or both. Therefore when determining whether a conflict or potential conflict of interest is present for a contract that is part of a project funded in whole or in part with federal funds, both State and Federal laws should be consulted. Additionally, exemptions from the conflict of interest statutes present in State law are not automatic exemptions from conflicts of interest under Federal law, and vice versa.

- a. North Carolina Law. North Carolina law restricts the behavior of Public Officials and employees of the City involved in contracting on behalf of the City. The City shall conduct the selection, award, and administration of Contracts and Subawards in accordance with the prohibitions imposed by the State Statutes and restated in this Section IV. Note the State statutes should be consulted, in addition to this policy, when determining whether or not an impermissible conflict of interest or potential conflict of interest exists under State law.
 - i. G.S. § 14-234(a)(1). A Public Officer or employee of the City Involved in Making or Administering a Contract or Subaward on behalf of the City shall not derive a Direct Benefit from such a Contract or Subaward. (Please refer to the definition of “Making or Administering a Contract or Subaward.”)
 - ii. G.S. § 14-234(a)(3). No Public Officer or employee of the City may solicit or receive any gift, favor, reward, service, or promise of reward, including but not limited to a promise of future employment, in exchange for recommending, influencing, or attempting to influence the award of a Contract or Subaward by the City.
 - iii. G.S. § 14-234.3. If a member of the City Council of the City serves as a director, officer, or City Council member of a Covered Nonprofit Organization, such member shall not (1) deliberate or vote on a Contract or Subaward between the City and the Covered Nonprofit Corporation, (2) attempt to influence any other person who deliberates or votes on a Contract or Subaward between the City and the Covered Nonprofit Corporation, or (3) solicit or receive any gift, favor, reward, service, or promise of future employment, in exchange for recommending or attempting to influence the award of a Contract or Subaward to the Covered Nonprofit Organization.
 - iv. G.S. § 14-234.1. A Public Officer or employee of the City shall not, in contemplation of official action by the Public Officer or employee, or in reliance on information which was made known to the public official or employee and which has not been made public, (1) acquire a pecuniary interest in any property, transaction, or enterprise or gain any pecuniary benefit which may be affected by such information or other information, or (2) intentionally aid another in violating the provisions of this section.
- b. Federal Standards.
 - i. Prohibited Conflicts of Interest in Contracting. Without limiting any specific prohibition set forth in Section IV(a), a Covered Individual may not participate in the selection, award, or administration of a Contract or Subaward if such Covered Individual has a real or apparent conflict of interest.

Note the Federal statutes should be consulted, in addition to this policy, when determining or not an impermissible real or apparent conflict of interest or potential real or apparent conflict of interest exists under Federal law.

1. Real Conflict of Interest. A real conflict of interest shall exist when the Covered Individual or any Related Party has a financial or other interest in or a tangible personal benefit from a firm considered for a Contract or Subaward. Exhibit A attached hereto provides a non-exhaustive list of examples of (i) financial or other interests in a firm considered for a Contract or Subaward, and (ii) tangible personal benefits from a firm considered for a Contract or Subaward.
 2. Apparent Conflict of Interest. An apparent conflict of interest shall exist where a real conflict of interest may not exist under Section IV(b)(i)(1), but where a reasonable person with knowledge of the relevant facts would find that an existing situation or relationship creates the appearance that a Covered Individual or any Related Party has a financial or other interest in or a tangible personal benefit from a firm considered for a Contract or Subaward.
- ii. Identification and Management of Conflicts of Interest.
1. Duty to Disclose and Disclosure Forms
 - a. Each Covered Individual expected to be or actually involved in the selection, award, or administration of a Contract or Subaward has an ongoing duty to disclose to the COI Point of Contact potential real or apparent conflicts of interest arising under this Policy. Covered Individuals should use the Conflict of Interest Disclosure Forms (Exhibit C for Contracts or subcontracts, and Exhibit E for subawards) to disclose the potential real or apparent conflict of interest, and forward to their Department Director or COI Point of Contact.
 - b. All Covered Individuals are required to sign, submit and keep on file with the COI Point of Contact the Policy Awareness Form stating that they have read this Policy and are aware of its contents and understand their duty to disclose potential real or apparent conflicts of interest for contracts entered for project funded in whole or in part by Federal funds (Exhibit F).
 2. Identification Prior to Award of Contract or Subaward.
 - a. Prior to the City's award of a Contract or Subaward, the Contract or Subaward the City Department Director whose department is administering the contract shall complete the appropriate Compliance Checklist contained in Exhibit B (for Contracts or subcontracts) and Exhibit D (for Subawards) attached hereto to determine whether or not any Covered Individuals expected to be or actually involved in the Make or Administering of a Contract have a potential real or apparent conflict of interest. The Department Director must require the completion of a Conflict of Interest Disclosure Form (Exhibit C for Contracts or subcontracts, and Exhibit E for subawards) by all Covered Individuals determined to have a potential real or apparent conflict of interest. The Department Director must file the Compliance Checklist and all Conflict of Interest Disclosure Forms with the COI Point of Contact.

3. Management of Conflicts of Interest.

- a. If, after completing the Compliance Checklist, the Department Director identifies a potential real or apparent conflict of interest relating to a proposed Contract or Subaward, or at any other time a Departmental Director becomes aware of a potential real or apparent conflict of interest relating to a proposed Contract or Subaward, the Department Director shall disclose such finding in writing to the COI Point of Contact. The COI Point of Contact will present the potential real or apparent conflict of interest to the City Manager who will either:
 - i. accept the finding of the COI Point of Contact and direct the Department Director to obtain authorization to enter into (or continue) the Contract or Subaward from (a) if City is a Recipient of Federal Financial Assistance, the Federal awarding agency with appropriate mitigation measures, or (b) if City is a Subrecipient of Federal Financial Assistance, from the Pass-Through Entity that provided a Subaward to City. The City shall follow any instructions received from the Federal awarding agency to resolve the conflict(s); or
 - ii. reject the finding of the COI Point of Contact and present to City Council the option approving the of entering into of the Contract or Subaward if City Council also rejects the finding of the COI Point of Contact. In rejecting any finding of the COI Point of Contact, the City Manager shall in writing document a justification supporting such rejection. Entering into a Contract or Subaward where either the COI Point of Contact or the Department Director have identified a real or apparent conflict of interest shall require approval of City Council after a finding by City Council that there is no real or apparent conflict of interest.
- b. If City Council determines that there is a potential real or apparent conflict of interest, the City Manager shall direct the Department Director to obtain authorization to enter into (or continue) the Contract or Subaward from (a) if City is a Recipient of Federal Financial Assistance, the Federal awarding agency with appropriate mitigation measures, or (b) if City is a Subrecipient of Federal Financial Assistance, from the Pass-Through Entity that provided a Subaward to City. The City shall follow any instructions received from the Federal awarding agency to resolve the conflict(s).
- c. If the Federal agency or Pass-Through Entity that provided a Subaward to the City does not authorize the award or continuance of the Contract or Subaward, then the Contract or Subaward shall be rejected (if not yet awarded) or terminated.
- d. If the Department Director and the COI Point of Contact do not identify a potential real or apparent conflict of interest relating to a proposed Contract or Subaward, the City may enter into the Contract or Subaward in accordance with the City's purchasing or subaward policy.

4. Identification After Award of Contract or Subaward.

- a. If the Department Director or COI Point of Contact discovers that a conflict of interest has arisen after the City has entered into a Contract or Subaward, the COI Point of Contact or Department Director shall, as soon as possible, disclose such finding to the City Manager. Upon discovery of such a real or apparent conflict of interest, the City shall cease all payments under the relevant Contract or Subaward and proceed pursuant to paragraph 3 above until the conflict of interest has been resolved or the Contract or Subaward is terminated.

V. Oversight of Subrecipient's Conflict of Interest Standards

- a. Subrecipients of City Must Adopt Conflict of Interest Policy. Prior to the City's execution of any Subaward for which the City serves as a Pass-Through Entity, the COI Point of Contact shall ensure that the proposed Subrecipient of Federal Financial Assistance has adopted a conflict of interest policy that satisfies the requirements of 2 C.F.R. § 200.318(c)(1), 2 C.F.R. § 200.318(c)(2), and all other applicable federal regulations.
- b. Obligation to Disclose Subrecipient Conflicts of Interest. The COI Point of Contact shall ensure that the legal agreement under which the City makes a Subaward to a Subrecipient shall require such Subrecipient to disclose to the COI Point of Contact any potential real or apparent conflicts of interest that the Subrecipient identifies. Upon receipt of such disclosure, the COI Point of Contact shall disclose such information to the Federal awarding agency that funded the Subaward in accordance with that agency's disclosure policy.

VI. Gift Standards

- a. Federal Standard. Subject to the exceptions set forth in Section VI(b), a Covered Individual may not solicit or accept gratuities, favors, or anything of monetary value from a Contractor or a Subcontractor.
- b. Exception. Notwithstanding Section VI(a), a Covered Individual may accept an unsolicited gift from a Contractor or Subcontractor of one or more types specified below if the gift has an aggregate market value of \$20 or less per source per occasion, provided that the aggregate market value of all gifts received by the Covered Individual pursuant to this Section VI(b) does not exceed \$50 in a calendar year:
 - i. honorariums for participating in meetings;
 - ii. advertising items or souvenirs of nominal value; or
 - iii. meals furnished at banquets.
- c. Internal Reporting. A Covered Individual shall report any gift accepted under Section VI(b) to the COI Point of Contact. If required by regulation of a Federal awarding agency, the COI Point of Contact shall report such gifts to the Federal awarding agency or a Pass-Through Entity for which the City is a Subrecipient.

VII. Violations of Policy

- a. Disciplinary Actions for Covered Individuals. Any Covered Individual that fails to disclose a real, apparent, or potential real or apparent conflict of interest arising with respect to the Covered Individual or Related Party may be subject to disciplinary action, including, but not limited to, an employee's termination or

suspension of employment with or without pay, the consideration or adoption of a resolution, or termination of a Public Official by the City Council, or termination of an agent's contract with the City.

- b. Disciplinary Actions for Contractors and Subcontractors. The City shall terminate any Contract with a Contractor or Subcontractor that violates any provision of this Policy.
- c. Protections for Whistleblowers. In accordance with 41 U.S.C. § 4712, the City shall not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant: (i) a member of Congress or a representative of a committee of Congress; (ii) an Inspector General; (iii) the Government Accountability Office; (iv) a Treasury or other federal agency employee responsible for grant oversight or management; (v) an authorized official of the Department of Justice or other law enforcement agency; (vi) a court or grand jury; or (vii) a management official or other employee of the City, a Contractor, or Subcontractor who has the responsibility to investigate, discover, or address misconduct.

Adopted this the [___] day of [____], [_____].

EXHIBIT A

Examples

<i>Potential Examples of a “Financial or Other Interest” in a Firm or Organization Considered for a Contract or Subaward</i>	<i>Potential Examples of a “Tangible Personal Benefit” From a Firm or Organization Considered for a Contract or Subaward</i>
<p>Direct or indirect equity interest in a firm or organization considered for a Contract or Subaward, which may include:</p> <ul style="list-style-type: none"> - Stock in a corporation. - Membership interest in a limited liability company. - Partnership interest in a general or limited partnership. - Any right to control the firm or organization’s affairs. For example, a controlling equity interest in an entity that controls or has the right to control a firm considered for a contract. - Option to purchase any equity interest in a firm or organization. 	<p>Opportunity to be employed by the firm considered for a contract, an affiliate of that firm, or any other firm with a relationship with the firm considered for a Contract.</p> <p>A position as a director or officer of the firm or organization, even if uncompensated.</p>
<p>Holder of any debt owed by a firm considered for a Contract or Subaward, which may include:</p> <ul style="list-style-type: none"> - Secured debt (e.g., debt backed by an asset of the firm (like a firm’s building or equipment)) - Unsecured debt (e.g., a promissory note evidencing a promise to repay a loan). <ul style="list-style-type: none"> o Holder of a judgment against the firm. 	<p>A referral of business from a firm considered for a Contract or Subaward.</p>
<p>Supplier or contractor to a firm or organization considered for a Contract or Subaward.</p>	<p>Political or social influence (e.g., a promise of appointment to an local office or position on a public board or private board).</p>

EXHIBIT B**COMPLIANCE CHECKLIST FOR CONTRACT OVERSIGHT**

The City of Hendersonville (“City”) has adopted a Conflict of Interest Policy (“Policy”) that governs the City’s expenditure of Federal Financial Assistance (as defined in Section II of the Policy). The Policy designates the City Attorney as the “COI Point of Contact.” The Policy requires the Department Director administering this contract to complete this Compliance Checklist to identify potential real or apparent conflicts of interest in connection with proposed contracts (as defined in Section II) and file the Checklist with the COI Point of Contact.

Instructions for Completion

1. The Department Director shall complete Steps 1 through 5 of the Checklist below.
2. The Department Director shall collect a Conflict of Interest Disclosure Form from each Covered Individual whom the Department Director determines may have a real or apparent conflict of interest.
3. If the Department Director identifies a potential real or apparent conflict of interest after completing this Compliance Checklist, and reviewing all Conflict of Interest Disclosure Forms received, the Department Director shall report such potential conflict of interest to the COI Point of Contact.

Definitions.

1. *Covered Individual.* Each person identified in Section 2 of this Checklist is a “Covered Individual” for purposes of this Compliance Checklist and the Policy.
2. *Immediate Family Member* means, with respect to any Covered Individual, (i) a spouse, and parents thereof, (ii) a child, and parent thereof, (iii) a parent, and spouse thereof, (iv) a sibling, and spouse thereof, (v) a grandparent and grandchild, and spouses thereof, (vi) domestic partners and parents thereof, including domestic partners of any individual in (ii) through (v) of this definition; and (vii) any individual related by blood or affinity whose close association with the Covered Individual is the equivalent of a family relationship.
3. *Related Party* means (i) an Immediate Family Member of a Covered Individual, (ii) a partner of a Covered Individual, or (iii) a current or potential employer (other than the City) of a Covered Individual, of a partner of a Covered Individual, or of an Immediate Family Member of a Covered Individual.

Step			
1	Identify the proposed Contract, counterparty, and the subject of the Contract.	<u>Name of Contract:</u> <hr/> <u>Name of Counterparty</u> <hr/> <u>Subject of Contract:</u> <hr/>	
2	Identify all individuals involved in the selection, award, or administration of the Contract. These individuals are “Covered Individuals”. Ensure that each Covered Individual has been provided with a copy of the Conflict of Interest Policy.		
	<u>Public Officials</u>	<u>Employees</u>	<u>Agents</u>
3	Identify whether any Covered Individual has a (i) financial or other interest in, or (ii) tangible personal benefit from the firm considered for a Contract. Any Covered Individual identified to have a potential real conflict of interest must complete a Conflict of Interest Disclosure Form (Exhibit C).		
Any identified interest in Step 3 is a potential “real” conflict of interest.	<u>Public Officials</u>	<u>Employees</u>	<u>Agents</u>
4	Identify whether any Related Party has a (i) financial or other interest in or (ii) tangible personal benefit from the firm considered from a Contract. Any Covered Individual identified to have a potential real conflict of interest must complete a Conflict of Interest Disclosure Form (Exhibit C).		
Any identified interest in Step 4 is a potential “real” conflict of interest.	<u>Public Officials – Related Party</u>	<u>Employees – Related Party</u>	<u>Agents – Related Party</u>

5	Identify whether a reasonable person with knowledge of the relevant facts would find that an existing situation or relationship <i>appearance</i> that a Covered Individual or any Related Party has a financial or other interest in or a tangible personal benefit from a firm considered for a Contract? If yes, explain. Any Covered Individual identified to have a potential apparent conflict of interest must complete a Conflict of Interest Disclosure Form (Exhibit C).		
Any identified interest in Step 5 is a potential “apparent” conflict of interest.	<u>Public Officials</u>	<u>Employees</u>	<u>Agents</u>

Department Director: _____

Signature of Department Director: _____

Date of Completion: _____

Date of Submission to COI Point of Contact: _____

CONTRACT CONFLICT OF INTEREST DISCLOSURE FORM
FOR OFFICIALS, EMPLOYEES, AND AGENTS

The City of Hendersonville (“City”) has adopted a Conflict of Interest Policy (“Policy”) that governs the City’s expenditure of Federal Financial Assistance (as defined in Section II of the Policy). The Policy designates the City Attorney as the COI Point of Contact.

The Department Director has identified you as an official, employee, or agent of the City that may be involved in the selection, award, or administration of the following contract or subcontract: _____ (the “Contract”) with a potential real or apparent conflict of interest. To safeguard the City’s expenditure of Federal Financial Assistance, the Department Director has requested that you complete this form to identify any potential real or apparent conflicts of interest in the Firm considered for the award of a Contract. Using the Exhibit A to the Policy as a guide, please answer the following questions:

1. Do you have a financial or other interest in a firm considered for this Contract?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

2. Will you receive any tangible personal benefit from a firm considered for this Contract?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

3. For purposes of Question 3(a) and 3(b), your “Immediate Family Members” include: (i) your spouse and their parents, (ii) your child, (iii) your parent and any spouse of your parent, (iv) your sibling and any spouse of your sibling, (v) your grandparents or grandchildren, and the spouses of each, (vi) any domestic partner of any individual in (ii) through (v) of this definition; and (vii) any individual related by blood or affinity whose close association with you is the equivalent of a family relationship.

- a. Do you have an Immediate Family Member with a financial or other interest in a firm considered for this Contract?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

- b. Do you have an Immediate Family Member that will receive a tangible personal benefit from a firm considered for this Contract?

Yes _____ No _____ Unsure: _____

1. Do you have any other partner with a financial or other interest in a firm considered for this Contract?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

2. Will any other partner of yours receive any tangible personal benefit from a firm considered for this Contract?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

3. Does your current or potential employer (other than the City) have a financial or other interest in a firm considered for this Contract or will such current or potential employer receive a tangible personal benefit from this Contract?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

4. Benefits to Employers

- a. Does a current or potential employer (other than the City) of any of your Immediate Family Members have a financial or other interest in a firm considered for this Contract?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

- b. Will a current or potential employer (other than the City) of any of your Immediate Family Members receive a tangible personal benefit from this Contract?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

- c. Does a current or potential employer (other than the City) of any partner of yours have a financial or other interest in a firm considered for this Contract?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

- d. Will a current or potential employer (other than the City) of any partner of yours receive a tangible benefit from this Contract?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

5. Does any existing situation or relationship create the appearance that you have a financial or other interest in a firm considered for this Contract or will receive a tangible personal benefit from a firm considered for this Contract?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

6. Does any existing situation or relationship create the appearance that any Immediate Family Member of yours has a financial or other interest in a firm considered for this Contract or will receive a tangible personal benefit from a firm considered for this Contract?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

7. Does any existing situation or relationship create the appearance that your current or potential employer (other than the City) has a financial or other interest in a firm considered for this Contract or will receive a tangible personal benefit from a firm considered for this Contract?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

8. Does any existing situation or relationship create the appearance that any current or potential employer (other than the City) of any of your Immediate Family Members has a financial or other interest in a firm considered for this Contract or will receive a tangible personal benefit from a firm considered for this Contract?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

9. Does any existing situation or relationship create the appearance that any current or potential employer (other than the City) of any other partner has a financial or other interest in a firm considered for this Contract or will receive a tangible personal benefit from a firm considered for this Contract?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

Sign Name:

Print Name:

Name of Employer

Job Title:

Date of Completion:

EXHIBIT D**COMPLIANCE CHECKLIST FOR SUBAWARD OVERSIGHT**

The City of Hendersonville (“City”) has adopted a Conflict of Interest Policy (“Policy”) that governs the City’s expenditure of Federal Financial Assistance (as defined in Section II of the Policy). The Policy designates the City Attorney as the “COI Point of Contact.” The Policy requires the Department Director administering this subaward to complete this Compliance Checklist to identify potential real or apparent conflicts of interest in connection with proposed Subawards (as defined in Section II) and file the Checklist with the COI Point of Contact.

Instructions for Completion

4. The Department Director shall complete Steps 1 through 5 of the Checklist below.
5. The Department Director shall collect a Conflict of Interest Disclosure Form from each Covered Individual whom the Department Director determines may have a real or apparent conflict of interest.
6. If the Department Director identifies a potential real or apparent conflict of interest after completing this Compliance Checklist, and reviewing all Conflict of Interest Disclosure Forms received, the Department Director shall report such potential conflict of interest to the COI Point of Contact.

Definitions.

1. *Covered Individual.* Each person identified in Section 2 of this Checklist is a “Covered Individual” for purposes of this Compliance Checklist and the Policy.
2. *Immediate Family Member* means, with respect to any Covered Individual, (i) a spouse, and parents thereof, (ii) a child, and parent thereof, (iii) a parent, and spouse thereof, (iv) a sibling, and spouse thereof, (v) a grandparent and grandchild, and spouses thereof, (vi) domestic partners and parents thereof, including domestic partners of any individual in (ii) through (v) of this definition; and (vii) any individual related by blood or affinity whose close association with the Covered Individual is the equivalent of a family relationship.
3. *Related Party* means (i) an Immediate Family Member of a Covered Individual, (ii) a partner of a Covered Individual, or (iii) a current or potential employer (other than the City) of a Covered Individual, of a partner of a Covered Individual, or of an Immediate Family Member of a Covered Individual.

Step			
1	Identify the proposed Subaward, Subrecipient, and the subject of the Subaward.	<u>Name of Subaward:</u> <hr/> <u>Name of Counterparty</u> <hr/> <u>Subject of Subaward:</u> <hr/>	
2	Identify all individuals involved in the selection, award, or administration of the Subaward. These individuals are “Covered Individuals”. Ensure that each Covered Individual has been provided with a copy of the Conflict of Interest Policy.		
	<u>Public Officials</u>	<u>Employees</u>	<u>Agents</u>
3	Identify whether any Covered Individual has a (i) financial or other interest in, or (ii) tangible personal benefit from the firm considered for a Subaward. Any Covered Individual identified to have a potential real conflict of interest must complete a Conflict of Interest Disclosure Form (Exhibit E).		
Any identified interest in Step 3 is a potential “real” conflict of interest.	<u>Public Officials</u>	<u>Employees</u>	<u>Agents</u>
4	Identify whether any Related Party has a (i) financial or other interest in or (ii) tangible personal benefit from the firm considered from a Subaward. Any Covered Individual identified to have a potential real conflict of interest must complete a Conflict of Interest Disclosure Form (Exhibit E).		
Any identified interest in Step 4 is a potential “real” conflict of interest.	<u>Public Officials – Related Party</u>	<u>Employees – Related Party</u>	<u>Agents – Related Party</u>

5	Identify whether a reasonable person with knowledge of the relevant facts would find that an existing situation or relationship <i>appearance</i> that a Covered Individual or any Related Party has a financial or other interest in or a tangible personal benefit from a firm considered for a Subaward? If yes, explain. Any Covered Individual identified to have a potential apparent conflict of interest must complete a Conflict of Interest Disclosure Form (Exhibit E).		
Any identified interest in Step 5 is a potential “apparent” conflict of interest.	<u>Public Officials</u>	<u>Employees</u>	<u>Agents</u>

Department Director: _____

Signature of Department Director: _____

Date of Completion: _____

Date of Submission to COI Point of Contact: _____

SUBAWARD CONFLICT OF INTEREST DISCLOSURE FORM
FOR OFFICIALS, EMPLOYEES, AND AGENTS

The City of Hendersonville (“City”) has adopted a Conflict of Interest Policy (“Policy”) that governs the City’s expenditure of Federal Financial Assistance (as defined in Section II of the Policy). The Policy designates the City Attorney as the COI Point of Contact.

The Department Director has identified you as an official, employee, or agent of the City that may be involved in the selection, award, or administration of the following subaward: _____ (the “Subaward”) with a potential real or apparent conflict of interest. To safeguard the City’s expenditure of Federal Financial Assistance, the Department Director has requested that you complete this form to identify any potential real or apparent conflicts of interest in the Firm considered for the award of a Subaward. Using the Exhibit A to the Policy as a guide, please answer the following questions:

1. Do you have a financial or other interest in a firm considered for this Subaward?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

2. Will you receive any tangible personal benefit from a firm considered for this Subaward?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

3. For purposes of Question 3(a) and 3(b), your “Immediate Family Members” include: (i) your spouse and their parents, (ii) your child, (iii) your parent and any spouse of your parent, (iv) your sibling and any spouse of your sibling, (v) your grandparents or grandchildren, and the spouses of each, (vi) any domestic partner of any individual in (ii) through (v) of this definition; and (vii) any individual related by blood or affinity whose close association with you is the equivalent of a family relationship.

- a. Do you have an Immediate Family Member with a financial or other interest in a firm considered for this Subaward?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

- b. Do you have an Immediate Family Member that will receive a tangible personal benefit from a firm considered for this Subaward?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

4. Do you have any other partner with a financial or other interest in a firm considered for this Subaward?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

5. Will any other partner of yours receive any tangible personal benefit from a firm considered for this Subaward?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

6. Does your current or potential employer (other than the City) have a financial or other interest in a firm considered for this Subaward or will such current or potential employer receive a tangible personal benefit from this Subaward?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

7. Benefits to Employers

- a. Does a current or potential employer (other than the City) of any of your Immediate Family Members have a financial or other interest in a firm considered for this Subaward?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

- b. Will a current or potential employer (other than the City) of any of your Immediate Family Members receive a tangible personal benefit from this Subaward?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

- c. Does a current or potential employer (other than the City) of any partner of yours have a financial or other interest in a firm considered for this Subaward?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

- d. Will a current or potential employer (other than the City) of any partner of yours receive a tangible personal benefit from this Subaward?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

8. Does any existing situation or relationship create the appearance that you have a financial or other interest in a firm considered for this Subaward or will receive a tangible personal benefit from a firm considered for this Subaward?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

9. Does any existing situation or relationship create the appearance that any Immediate Family Member of yours has a financial or other interest in a firm considered for this Subaward or will receive a tangible personal benefit from a firm considered for this Subaward?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

10. Does any existing situation or relationship create the appearance that your current or potential employer (other than the City) has a financial or other interest in a firm considered for this Subaward or will receive a tangible personal benefit from a firm considered for this Subaward?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

11. Does any existing situation or relationship create the appearance that any current or potential employer (other than the City) of any of your Immediate Family Members has a financial or other interest in a firm considered for this Subaward or will receive a tangible personal benefit from a firm considered for this Subaward?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

12. Does any existing situation or relationship create the appearance that any current or potential employer (other than the City) of any other partner has a financial or other interest in a firm considered for this Subaward or will receive a tangible personal benefit from a firm considered for this Subaward?

Yes _____ No _____ Unsure: _____

If the answer is Yes or Unsure, please explain:

* * * * *

Sign Name: _____

Print Name: _____

Name of Employer _____

Job Title: _____

Date of Completion: _____

* * * * *

CONFLICT OF INTEREST POLICY AWARENESS FORM

I, _____, have read the CONFLICT OF INTEREST POLICY APPLICABLE TO CONTRACTS, AWARDS AND SUBAWARDS OF THE CITY OF HENDERSONVILLE and I am aware of its contents.

_____ (Initial) I understand that the policy obligates me to be aware of the contractors and subcontractors who are performing any of the work involved in all projects that I am involved with which are funded in whole or in part with federal funds.

_____ (Initial) I understand that if I or my immediate family members as defined in the policy have any potential real or apparent conflicts of interest with any of the contractors or subcontractors, I must disclose this to my Department Director (or if a Department Director to the City Manager) and complete a Contract Conflict of Interest Disclosure Form (Exhibit C).

_____ (Initial) I understand that the policy obligates me to be aware of the subrecipients who are receiving money through a subaward that I am involved with which is funded in whole or in part with federal funds.

_____ (Initial) I understand that if I or my immediate family members as defined in the policy have any potential real or apparent conflicts of interest with any of the subrecipients, I must disclose this to my Department Director (or if a Department Director to the City Manager) and complete a Subaward Conflict of Interest Disclosure Form (Exhibit F).

_____ (Initial) I understand that if I become aware of any Covered Individual having a real or apparent conflict of interest with any contractor, subcontractor, or subrecipient that I am to report this to my Department Director so that the Covered Individual can complete the appropriate Disclosure Form.

Sign Name: _____

Print Name: _____

Name of Employer _____

Job Title: _____

Date of Completion: _____

**POLICY OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO PROHIBIT
DISCRIMINATION IN PROGRAMS AND SERVICES AND IN ACTIVITIES
RECEIVING FEDERAL FINANCIAL ASSISTANCE (A SUPPLEMENT TO THE
TITLE VI PLAN)**

Recitals

1. The City of Hendersonville has and will receive federal funds in the form of grants and loans and other funding types, collectively “Federal Funds”; and
2. Receipt of Federal Funds is conditioned on the City of Hendersonville agreeing to follow all federal statutes and regulations prohibiting discrimination in its administration of the Federal Funds, including, without limitation, the following:
 - a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury’s implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin within programs or activities receiving federal financial assistance;
 - b. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
 - c. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving Federal financial assistance;
 - d. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury’s implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
 - e. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto; and
3. On June 3, 2021, the City Council, by Resolution #R-21-47, adopted a Title VI Plan for the City of Hendersonville addressing nondiscrimination pursuant to the foregoing federal laws, with the exception of The Fair Housing Act, and therefore wishes to adopt this policy to supplement the Title VI Plan.

This Nondiscrimination Policy shall apply to the operations of any program, activity, or facility that is supported in whole, or in part, by expenditures of Federal Funds.

Nondiscrimination Policy

It is the policy of the City of Hendersonville to ensure that no person shall, on the ground of race, color, national origin (including limited English Proficiency), familial status, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under any program or activity administered by the City of Hendersonville, including programs or activities that are funded in whole or part, with Federal Funds.

I. Governing Statutory & Regulatory Authorities

The City of Hendersonville shall ensure that each “activity,” “facility,” or “program”¹ that is funded in whole, or in part, with Federal Funds, will be facilitated, operated, or conducted in compliance with the following federal statutes and federal regulations prohibiting discrimination. These include, but are not limited to, the following:

- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury’s implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance (Reference is made to the City of Hendersonville Title VI Plan, adopted by Resolution #R-21-47 on June 3, 2021, which is fully incorporated herein.);
- ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
- iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance (Reference is made to the City of Hendersonville Title VI Plan, adopted by Resolution #R-21-47 on June 3, 2021, which is fully incorporated herein.);
- iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury’s implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age within programs or activities receiving federal financial assistance (Reference is made to the City of Hendersonville Title VI Plan, adopted by Resolution #R-21-47 on June 3, 2021, which is fully incorporated herein.); and
- v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto. (Reference is made to the City of Hendersonville Title VI Plan, adopted by Resolution #R-21-47 on June 3, 2021, which is fully incorporated herein.)

II. Discriminatory Practices Prohibited in the Administration of the ARP/CSLFRF Award

To ensure compliance with Title VII of the Civil Rights Act of 1964, and Title 31 Code of Federal Regulations, Part 22, the Civil Rights Restoration Act of 1987, and other pertinent

¹ 22 C.F.R. § 22.3 defines “program” and “activity” as all operations of an entity, including local governments, that receive Federal financial assistance, and the departments, agencies, or special purpose districts of the local governments to which Federal financial assistance is distributed. “Federal financial assistance” includes, among other things, grants and loans of federal funds. “Facility” includes all or any part of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration, or acquisition of facilities.

nondiscrimination authorities, the City of Hendersonville shall prohibit, at a minimum, the following practices in its administration of Federal Funds:

1. Denying to a person any service, financial aid, or other program benefit without good cause;
2. Providing to a person any service, financial aid, or another benefit which is different in quantity or quality, or is provided in a different manner, from that provided to others under the program.
3. Subjecting a person to segregation or separate treatment in any matter related to the receipt of any service, financial aid, or other benefit under the program;
4. Restricting a person in the enjoyment of any advantages, privileges, or other benefits enjoyed by others receiving any service, financial aid, or other benefit under the program;
5. Treating a person differently from others in determining whether that person satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which persons must meet to be provided any service, financial aid, or other benefit provided under the program;
6. Implementing different standards, criteria, or other requirements for admission, enrollment, or participation in planning, advisory, contractual, or other integral activities to the program;
7. Adopting methods of administration which, directly or through contractual relationships, would defeat or substantially impair the accomplishment of effective nondiscrimination;
8. Selecting a site or location of facilities with the purpose or effect of excluding persons from, denying them the benefits of, subjecting them to discrimination, or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of Title VI or related acts and regulations;
9. Discriminating against any person, either directly or through a contractual agreement, in any employment resulting from the program, a primary objective of which is to provide employment;
10. Committing acts of intimidation or retaliation, including threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by any pertinent nondiscrimination law, or because an individual made a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing.

III. Reporting & Enforcement

1. The City of Hendersonville shall cooperate in any enforcement or compliance review activities by the Department of the Treasury. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The City of Hendersonville shall comply with information requests, on-site compliance reviews, and reporting requirements.
2. The City of Hendersonville shall maintain a complaint log and inform the Treasury of any complaints of discrimination on the grounds of race, color, or national origin (including limited English proficiency covered by Title VI of the Civil Rights Act of

1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, whether pending or completed, including the outcome. The City of Hendersonville shall inform the Treasury if it has received no complaints under Title VI.

3. Any person who believes they have been aggrieved by a discriminatory practice under Title VI has a right to file a formal complaint with the Treasury. Any such complaint must be in writing and filed with the Treasury's Title VI Coordinator within one hundred eighty (180) days following the date of the alleged discriminatory occurrence, contact information below.
4. Any person who believes that because of that person's race, color, national origin, limited English proficiency, familial status, sex, age, religion, or disability that he/she/they have been discriminated against or unfairly treated by the City of Hendersonville in violation of this policy should contact the Title VI Coordinator and City Clerk, Angela Reece within 180 days from the date of the alleged discriminatory occurrence, contact information below. Complaint forms are attached .

Angela Reece
City Clerk
 160 Sixth Ave. East
 Hendersonville, NC 28792

828-697-3005
 828-697-3014 (Fax)
areece@hvlnc.gov |
<https://www.hendersonvillenc.gov/>

U.S. Department of Health and Human Services, Office for Civil Rights, electronically through the [Office for Civil Rights Compliant Portal, at the following link: https://ocrportal.hhs.gov/ocr/smartscreen/main.jsf](https://ocrportal.hhs.gov/ocr/smartscreen/main.jsf) or by mail or phone at:

U.S. Department of Health and Human Services
 200 Independence Avenue, SW
 Room 509F, HHH Building
 Washington, D.C. 20201
 1-800-368-1019
 800-537-7697 (TDD)

Adopted by the City Council of the City of Hendersonville, North Carolina on the _____ day of _____, 2022.

DISCRIMINATION COMPLAINT FORM IN ENGLISH AND SPANISH

Hendersonville, North Carolina

Discrimination Complaint Form

RETURN COMPLAINT FORM TO: The City of Hendersonville Title VI Plan and Program Coordinator 160 6 th Ave E. Hendersonville, NC 28792 828-697-3005
FOR OFFICE USE ONLY
Date Complaint Received: _____ Processed by: _____ Case #: _____ Date Referred: _____

Any person who believes that he/she has been subjected to discrimination based upon race, color, creed, sex, age, national origin, or disability may file a written complaint with the City of Hendersonville, within 180 days after the discrimination occurred.

Last Name: _____		First Name: _____		<input type="checkbox"/> Male <input type="checkbox"/> Female
Mailing Address: _____		City _____	State _____	Zip _____
Home Telephone: _____	Work Telephone: _____	E-mail Address _____		
Identify the Category of Discrimination: <div style="display: flex; flex-wrap: wrap;"> <div style="width: 50%;"><input type="checkbox"/> RACE</div> <div style="width: 50%;"><input type="checkbox"/> COLOR</div> <div style="width: 50%;"><input type="checkbox"/> NATIONAL ORIGIN</div> <div style="width: 50%;"><input type="checkbox"/> SEX</div> <div style="width: 50%;"><input type="checkbox"/> CREED (RELIGION)</div> <div style="width: 50%;"><input type="checkbox"/> DISABILITY</div> <div style="width: 50%;"><input type="checkbox"/> LIMITED ENGLISH PROFICIENCY</div> <div style="width: 50%;"><input type="checkbox"/> AGE</div> </div>				
<i>*NOTE: Title VI bases are race, color, national origin. All other bases are found in the "Nondiscrimination Assurance" of the FTA Certifications & Assurances.</i>				
Identify the Race of the Complainant <div style="display: flex; flex-wrap: wrap;"> <div style="width: 50%;"><input type="checkbox"/> Black</div> <div style="width: 50%;"><input type="checkbox"/> White</div> <div style="width: 50%;"><input type="checkbox"/> Hispanic</div> <div style="width: 50%;"><input type="checkbox"/> Asian American</div> <div style="width: 50%;"><input type="checkbox"/> American Indian</div> <div style="width: 50%;"><input type="checkbox"/> Alaskan Native</div> <div style="width: 50%;"><input type="checkbox"/> Pacific Islander</div> <div style="width: 50%;"><input type="checkbox"/> Other _____</div> </div>				
Date and place of alleged discriminatory action(s). Please include earliest date of discrimination and most recent date of discrimination.				
Names of individuals responsible for the discriminatory action(s):				

How were you discriminated against? Describe the nature of the action, decision, or conditions of the alleged discrimination. Explain as clearly as possible what happened and why you believe your protected status (basis) was a factor in the discrimination. Include how other persons were treated differently from you. **(Attach additional page(s), if necessary).**

The law prohibits intimidation or **retaliation** against anyone because he/she has either taken action, or participated in action, to secure rights protected by these laws. If you feel that you have been retaliated against, separate from the discrimination alleged above, please explain the circumstances below. Explain what action you took which you believe was the cause for the alleged retaliation.

Names of persons (witnesses, fellow employees, supervisors, or others) whom we may contact for additional information to support or clarify your complaint: (Attached additional page(s), if necessary).

Name**Address****Telephone**

1. _____
2. _____
3. _____
4. _____

Have you filed, or intend to file, a complaint regarding the matter raised with any of the following? If yes, please provide the filing dates. Check all that apply.

- ☐ NC Department of Transportation _____
- ☐ Federal Transit Administration _____
- ☐ US Department of Transportation _____
- ☐ US Department of Justice _____
- ☐ Federal or State Court _____
- ☐ Other _____

Have you discussed the complaint with any Hendersonville representative? If yes, provide the name, position, and date of discussion.

Please provide any additional information that you believe would assist with an investigation.

Briefly explain what remedy, or action, are you seeking for the alleged discrimination.

****WE CANNOT ACCEPT AN UNSIGNED COMPLAINT. PLEASE SIGN AND DATE THE COMPLAINT FORM BELOW.**

COMPLAINANT'S SIGNATURE

DATE

Hendersonville, North Carolina

Formulario de queja por discriminación

DEVUELVA EL FORMULARIO DE QUEJA A:

La ciudad de Hendersonville
Coordinador del Plan y el Programa del Título VI
 160 6th Ave E.
 Hendersonville, NC 28792
 828-697-3005

SOLO PARA USO INTERNO

Fecha de recepción de la queja: _____

Procesado por: _____

No. de caso: _____

Fecha de la remisión: _____

Cualquier persona que crea que fue sujeto de discriminación por motivos de raza, color, credo, sexo, edad, país de origen o discapacidad puede presentar una queja por escrito ante la ciudad de Hendersonville, en un período de 180 días después de la discriminación.

Apellido:		Nombre:		<input type="checkbox"/> Hombre
				<input type="checkbox"/> Mujer
Dirección de correo postal:		Ciudad	Estado	Código postal
Teléfono de casa:	Teléfono de trabajo:	Dirección de correo electrónico		

Identifique la categoría de discriminación:

- | | | | |
|---|---------------------------------------|--|-------------------------------|
| <input type="checkbox"/> RAZA | <input type="checkbox"/> COLOR | <input type="checkbox"/> PAÍS DE ORIGEN | <input type="checkbox"/> SEXO |
| <input type="checkbox"/> CREDO (RELIGIÓN) | <input type="checkbox"/> DISCAPACIDAD | <input type="checkbox"/> POCO DOMINIO DEL INGLÉS | <input type="checkbox"/> EDAD |

** NOTA: Las bases del Título VI son raza, color, país de origen. Todas las demás bases están en la "Garantía de no discriminación" de las Certificaciones y garantías de FTA.*

Identificar la raza del denunciante

- | | | | |
|--|---|--|---|
| <input type="checkbox"/> Negro | <input type="checkbox"/> Blanco | <input type="checkbox"/> Hispano | <input type="checkbox"/> Asiático americano |
| <input type="checkbox"/> Indio americano | <input type="checkbox"/> Nativo de Alaska | <input type="checkbox"/> De otras islas del Pacífico | <input type="checkbox"/> Otro |

Fecha y lugar de las presuntas acciones discriminatorias. Incluya la última fecha de discriminación y la fecha más reciente de discriminación.

Nombres de las personas responsables de las acciones discriminatorias:

¿Cómo lo discriminaron? Describa la naturaleza de la acción, decisión o condiciones de la presunta discriminación. Explique lo más claramente posible lo que sucedió y por qué cree que su estado de protección (base) fue un factor en la discriminación. Incluya cómo trataron a otras personas de manera diferente a usted. **(Adjunte más páginas, si es necesario).**

La ley prohíbe la intimidación o las **represalias** contra cualquier persona porque haya tomado medidas o haya participado en acciones para garantizar los derechos protegidos por estas leyes. Si cree que se tomaron represalias contra usted, aparte de la discriminación declarada arriba, explique las circunstancias abajo. Explique qué acción tomó y cuál cree que fue la causa de la presunta represalia.

Nombres de personas (testigos, compañeros de trabajo, supervisores u otros) a quienes podemos contactar para obtener más información para respaldar o aclarar su queja: (Adjunte más páginas, si es necesario).

Nombre**Dirección****Teléfono**

1. _____
2. _____
3. _____
4. _____

¿Presentó o tiene la intención de presentar una queja con respecto al asunto planteado ante alguna de las siguientes autoridades? Si la respuesta es Sí, escriba las fechas de presentación. Marque todas las opciones que correspondan.

- ☐ Departamento de Transporte de Carolina del Norte _____
- ☐ Administración Federal de Tránsito _____
- ☐ Departamento de Transporte de EE. UU. _____
- ☐ Departamento de Justicia de EE. UU. _____
- ☐ Tribunal federal o estatal _____
- ☐ Otro _____

¿Ha hablado sobre la queja con algún representante de Hendersonville? Si la respuesta es Sí, escriba el nombre, el cargo y la fecha en la que hablaron.

Dé cualquier otra información que crea que podría ayudar con una investigación.

Explique brevemente qué recurso o acción está buscando por la presunta discriminación.

**** NO PODEMOS ACEPTAR UNA QUEJA QUE NO ESTÉ FIRMADA. FIRME ABAJO EL FORMULARIO DE QUEJA Y ESCRIBA LA FECHA:**

FIRMA DEL DEMANDANTE

FECHA

**Record Retention Policy: Documents Created or Maintained Pursuant to the
ARP/CSLFRF Award**

Retention of Records: The Coronavirus Local Fiscal Recovery Funds (“CSLFRF”) Award Terms and Conditions and the Compliance and Reporting Guidance set forth the U.S. Department of Treasury’s (“Treasury”) record retention requirements for the ARP/CSLFRF award.

It is the policy of the City of Hendersonville to follow Treasury’s record retention requirements as it expends CSLFRF pursuant to the APR/CSLFRF award. Accordingly, the City of Hendersonville agrees to the following:

- Retain all financial and programmatic records related to the use and expenditure of CSLFRF pursuant to the ARP/CSLFRF award for a period of five (5) years after all CLFRF funds have been expended or returned to Treasury, whichever is later.
- Retain records for real property and equipment acquired with CSLFRF for five years after final disposition.
- Ensure that the financial and programmatic records retained sufficiently evidence compliance with section 603(c) of the Social Security Act “ARPA,” Treasury’s regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
- Allow the Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, the right of right of timely and unrestricted access to any records for the purpose of audits or other investigations.
- If any litigation, claim, or audit is started before the expiration of the 5-year period, the records will be retained until all litigation, claims, or audit findings involving the records have been resolved.

Covered Records: For purposes of this policy, records are information, regardless of physical form or characteristics, that are created, received, or retained that evidence the City of Hendersonville’s expenditure of CSLFRF funds on eligible projects, programs, or activities pursuant to the ARP/CSLFRF award.

Records that shall be retained pursuant to this policy include, but are not limited to, the following:

- Financial statements and accounting records evidencing expenditures of CSLFRF for eligible projects, programs, or activities.

- Documentation of rational to support a particular expenditure of CSLFRF (e.g., expenditure constitutes a general government service);
- Documentation of administrative costs charged to the ARP/CSLFRF award;
- Procurement documents evidencing the significant history of a procurement, including, at a minimum, the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for contract cost or price;
- Subaward agreements and documentation of subrecipient monitoring;
- Documentation evidencing compliance with the Uniform Guidance property management standards set forth in 2 C.F.R. §§ 200.310-316 and 200.329;
- Personnel and payroll records for full-time and part-time employees compensated with CSLFRF, including time and effort reports; and
- Indirect cost rate proposals

Storage: City of Hendersonville's records must be stored in a safe, secure, and accessible manner. Wherever practicable, such records should be collected, transmitted, and stored in open and machine-readable formats.

Departmental Responsibilities: Any department or unit of the City of Hendersonville, and its employees, who are responsible for creating or maintaining the covered documents in this policy shall comply with the terms of this policy. Failure to do so may subject the City of Hendersonville to civil and/or criminal liability. Any employee who fails to comply with the record retention requirements set forth herein may be subject to disciplinary sanctions, including suspension or termination.

The City's Grant Accountant, Ashley Williams, or the City Manager's designee, is responsible for identifying the documents that City of Hendersonville must or should retain and arrange for the proper storage and retrieval of records. City's Grant Accountant shall also ensure that all personnel subject to the terms of this policy are aware of the record retention requirements set forth herein.

Reporting Policy Violations: The City of Hendersonville is committed to enforcing this policy as it applies to all forms of records. Any employee that suspects the terms of this policy have been violated shall report the incident immediately to that employee's supervisor. If an employee is not comfortable bringing the matter up with the supervisor, the employee may bring the matter to the attention of the City's Grant Accountant, or the City Manager's designee. The City of Hendersonville prohibits, any form of discipline, reprisal, intimidation, or retaliation for reporting incidents of inappropriate conduct of any kind, pursuing any record destruction claim, or cooperating in related investigations.

Questions About the Policy: Any questions about this policy should be referred to Ashley Williams, Grant Accountant, or the City Manager's designee, who is in charge of administering, enforcing, and updating this policy.

CITY OF HENDERSONVILLE PROPERTY MANAGEMENT POLICY FOR REAL AND PERSONAL PROPERTY PURCHASED IN WHOLE OR IN PART WITH FEDERAL FUNDS

Recitals:

1. The CITY OF HENDERSONVILLE, receives funding in the form of grants, awards, subawards, and loans from the Federal Government; and
2. Federal funding requires compliance with the National Objective, established for the Federal funding, and alignment with the Federal Goals for the funding; and
3. Federal funding requires compliance with the provisions of the Federal Uniform Grant Guidance, 2 CFR Sect. 200 (UG), except as modified by the Federal funding agency; and
4. Subpart D of the UG dictates title, use, management, and disposal of real property, personal property, equipment and supplies purchased in whole or in part with Federal funding, except as modified by the Federal funding agency.

POLICY OVERVIEW

The purpose of this policy is to comply with the requirements of Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, commonly called Uniform Guidance (UG), specifically Subpart D, which details post award requirements related to property management of property acquired or updated, in whole or in part, with Federal Funds. It should be noted that North Carolina law also applies to the acquisition, management and disposition of City property. Therefore, to the extent that the provisions of North Carolina law conflict with the UG, the most restrictive shall control. Lastly, the UG applies to the extent that requirements are not modified by the Federal funding agency; therefore funding agency regulations shall preempt the UG with regards to the acquisition, management and disposition of real or personal property acquired in whole or in part with Federal funds.

DEFINITIONS

The definitions in 2 CFR 200.1 apply to this policy, a few of which are restated in this policy below:

“Computing devices” means machines used to acquire, store, analyze, process, and publish data and other information electronically, including accessories (or “peripherals”) for printing, transmitting and receiving, or storing electronic information. See also the definitions of supplies and information technology systems in this section.

“Equipment” means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or

exceeds the lesser of the capitalization level established by the City for financial statement purposes, or \$5,000.

“Information technology systems” means computing devices, ancillary equipment, software, firmware, and similar procedures, services (including support services), and related resources. See also the definitions of computing devices and equipment in this section.

“Intangible property” means property having no physical existence, such as trademarks, copyrights, patents and patent applications and property, such as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership (whether the property is tangible or intangible).

Personal property: property other than real property. It may be tangible, having physical existence, or intangible.

“Property” means real property or personal property.

“Real property” means land, including land improvements, structures and appurtenances thereto, but excludes moveable machinery and equipment.

“Supplies” means all tangible personal property other than those described in the definition of equipment in this section. A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the local government for financial statement purposes or \$5,000, regardless of the length of its useful life. See also the definitions of computing devices and equipment in this section.

REAL PROPERTY

1. Title to Real Property: Title to real property acquired or improved with Federal funds vests with the City. 2 CFR 200.311(a).
2. Use of Real Property: Real property acquired or improved with Federal funds must be used for the originally authorized purpose as long as needed for that purpose, during which time the City must not dispose of or encumber its title or other interests. 2 CFR 200.311(b).
3. Insurance of Real Property: The City must provide the equivalent insurance coverage for real property acquired or improved with Federal funds as provided to property owned by the City. 2 CFR 200.310.
4. Disposition of Real Property: When the City no longer needs real property purchased with Federal for Federal purposes, the City must obtain disposition instructions from the Federal Agency. The instructions must provide for one of the following alternatives:
 - a. The City retains title after compensating the Federal Agency. The amount paid to the Federal Agency will be computed by applying the Federal Agency’s percentage of participation in the cost of the original purchase (and costs of any improvements) to the fair market value of the property. However, in those situations where the City is

- disposing of real property acquired or improved with Federal funds and acquiring replacement real property under the Federal, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.
- b. The City sells the property and compensates the Federal Agency. The amount due to the Federal Agency will be calculated by applying the Federal Agency's percentage of participation in the cost of the original purchase (and cost of any improvements) to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the Federal award has not been closed out, the net proceeds from sale may be offset against the original cost of the property. When the City is directed to sell property, sales procedures must be followed that provide for competition to the extent practicable and result in the highest possible return.
 - c. The City transfers title to the Federal Agency or to a third party designated or approved by the Federal Agency. The City is entitled to be paid an amount calculated by applying the City's percentage of participation in the purchase of the real property (and cost of any improvements) to the current fair market value of the property. 2 CFR 200.311(c).

EQUIPMENT

- 5. Title to Equipment: Title to equipment acquired or improved with Federal funds vests with the City. 2 CFR 200.313(a).
- 6. Use of Equipment: The City must use equipment acquired with Federal funds for the project for which it was acquired as long as needed, whether or not the project continues to be supported by the Federal award, and the City must not encumber the property without prior approval of the Federal Agency. 2 CFR 200.313(a)(1)-(2).
- 7. When no longer needed for the original project, the equipment may be used in other activities supported by a Federal awarding agency, in the following order of priority:
 - a. Activities under a Federal award from the Federal awarding agency which funded the original project, then
 - b. Activities under Federal awards from other Federal awarding agencies. This includes consolidated equipment for information technology systems. 2 CFR 200.313(c)(1).
- 8. During the time that equipment is used on the project for which it was acquired, the City must also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, provided that such use will not interfere with the work on the project for which it was originally acquired. First preference for other use must be given to other programs or projects supported by the Federal Agency and second preference must be given to programs or projects under Federal awards from other Federal

awarding agencies. Use for non-Federally-funded programs or projects is also permissible. User fees should be considered if appropriate. 2 CFR 200.313(c)(2).

9. Noncompetition: The City must not use equipment acquired with the Federal funds to provide services for a fee that is less than private companies charge for equivalent services unless specifically authorized by Federal statute for as long as the Federal Government retains an interest in the equipment. 2 CFR 200.313(c)(3).
10. Replacement Equipment: When acquiring replacement equipment, the City may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property. 2 CFR 200.313(c)(4).
11. Management of Equipment: The City will manage equipment (including replacement equipment) acquired in whole or in part with Federal funds according to the following requirements.
12. The City will maintain sufficient records that include
 - a description of the property,
 - a serial number or other identification number,
 - the source of funding for the property (including the Federal Award Identification Number (FAIN)),
 - who holds title,
 - the acquisition date,
 - cost of the property,
 - percentage of Federal participation in the project costs for the Federal award under which the property was acquired,
 - the location, use and condition of the property, and
 - any ultimate disposition data including the date of disposal and sale price of the property.
13. The City will conduct a physical inventory of the property and reconcile results with its property records at least once every two years.
14. The City will develop a control system to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft will be investigated by the City.
15. The City will develop and implement adequate maintenance procedures to keep the property in good condition.
16. If the City is authorized or required to sell the property, it will establish proper sales procedures to ensure the highest possible return, in accordance with state and Federal law.

17. Insurance of Equipment: The City must provide the equivalent insurance coverage for equipment acquired or improved with Federal funds as provided to property owned by the City. 2 CFR 200.310.
18. Disposition of Equipment: When the equipment is no longer needed for its original Federal purpose, the City may either make the equipment available for use in other activities funded by a Federal agency, with priority given to activities funded by the Federal Agency, dispose of the equipment according to instructions from the funding agency, or follow the procedures below. 2 CFR 200.313(e).
19. Equipment with a per-item fair market value of less than \$5,000 may be retained, sold or transferred by the City, in accordance with state law, with no additional responsibility to the Federal Agency;
20. If no disposal instructions are received from the Federal Agency, equipment with a per-item fair market value of greater than \$5,000 may be retained or sold by the City. The City must establish proper sales procedures, in accordance with state law, to ensure the highest possible return. The City must reimburse the Federal Agency for its Federal share. Specifically, the Federal Agency is entitled to an amount calculated by multiplying the current market value or proceeds from sale by the Federal funding percentage of participation in the cost of the original purchase. If the equipment is sold, the Federal Agency may permit the City to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.
21. Equipment may be transferred to the Federal Agency or to a third-party designated by the Federal Agency in return for compensation to the City for its attributable compensation for its attributable percentage of the current fair market value of the property.

SUPPLIES

22. Title to Supplies. Title to supplies acquired with Federal funds vests with the City upon acquisition. 2 CFR 200.314(a).
23. Use and Disposition of Supplies. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the Federal project and the supplies are not needed for any other Federal award, the City must retain the supplies for use on other activities or sell them, but must, in either case, compensate the Federal Government for its share. The amount of compensation must be computed in the same manner as for equipment. 2 CFR 200.314(a).
24. Noncompetition. As long as the Federal Government retains an interest in the supplies, the City must not use supplies acquired under the Federal to provide services to other organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute. 2 CFR 200.314(b).

PROPERTY TRUST RELATIONSHIP

25. Real property, equipment, and intangible property, that are acquired or improved with Federal funds must be held in trust by the City as trustee for the beneficiaries of the project or program under which the property was acquired or improved. the Federal Agency may require the City to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with a Federal award and that use and disposition conditions apply to the property. 2 CFR 200.316.

IMPLEMENTATION OF POLICY

26. The City Manager or his/her/their designee shall adopt procedures to track all real property, equipment, and supplies (collectively, property) acquired or improved in whole or in part with Federal funds. At a minimum, those procedures must address the following:
- a. Ensure proper insurance of property
 - b. Document proper use of property
 - c. Working with Ashley Williams, record and maintain required data records for equipment
 - d. Conduct periodic inventories of equipment, at least every two years
 - e. Create processes for replacement and disposition of property
 - f. Establish other internal controls to safeguard and properly maintain property

Adopted the _____ day of _____, 2022.

**ELIGIBLE PROJECT POLICY FOR THE EXPENDITURE OF AMERICAN RESCUE PLAN ACT OF
2021 CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS BY THE CITY OF
HENDERSONVILLE**

Recitals

1. The City of Hendersonville, has received an allocation of funds from the Coronavirus State and Local Fiscal Recovery Funds of H.R. 1319 American Rescue Plan Act of 2021 (ARP/CSLFRF); and
2. US Treasury is responsible for implementing ARP/CSLFRF and has enacted a Final Rule outlining eligible projects; and
3. The funds may be used for projects within these categories, to the extent authorized by state law; and
 - a. Support COVID-19 public health expenditures, by funding COVID-19 mitigation and prevention efforts, medical expenses, behavioral healthcare, preventing and responding to violence, and certain public health and safety staff;
 - b. Address negative economic impacts caused by the public health emergency, including economic harms to households, small businesses, non-profits, impacted industries, and the public sector;
 - c. Replace lost public sector revenue, using this funding to provide government services to the extent of the reduction in revenue experienced due to the pandemic;
 - d. Provide premium pay for essential workers, offering additional support to those who have borne and will bear the greatest health risks because of their service in critical infrastructure sectors; and,
 - e. Invest in water, sewer, and broadband infrastructure, making necessary investments to improve access to clean drinking water, support vital wastewater and stormwater infrastructure, and to expand access to broadband internet; and
4. The ARP/CSLFRF are subject to the provisions of the Federal Uniform Grant Guidance, 2 CFR Part 200 (UG), as provided in the Assistance Listing; and
5. US Treasury has issued a Compliance and Reporting Guidance v.2.1 (November 15, 2021) dictating implementation of the ARP/CSLFRF award terms and compliance requirements; and
6. The Compliance and Reporting Guidance states on page 6 that

Per 2 CFR Part 200.303, your organization must develop and implement effective internal controls to ensure that funding decisions under the SLFRF award constitute eligible uses of funds, and document determinations.

**ELIGIBILITY DETERMINATION POLICY FOR AMERICAN RESCUE PLAN ACT OF 2021
CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS**

This policy defines the permissible and prohibited uses of the Coronavirus State and Local Fiscal Recovery Funds of H.R. 1319 American Rescue Plan Act of 2021 (ARP/CSLFRF) funds. It also outlines the procedures for determining how City of Hendersonville will spend its ARP/CSLFRF funds.

PERMISSIBLE USES OF ARP/CSLFRF FUNDING

US Treasury issued its **Final Rule** regarding use of ARPA funds on January 6, 2022. (The Final Rule is effective as of April 1, 2022. Until that date, a local government may proceed under the regulation promulgated by US Department of the Treasury in its **Interim Final Rule** or the Final Rule.) The Final Rule (and the Interim Final Rule) identify permissible uses of ARP/CSLFRF funds and certain limitations and process requirements. Local governments must allocate ARP/CSLFRF funds no later than December 31, 2024 and disburse all funding no later than December 31, 2026. Failure of an entity to expend all funds by December 31, 2026 will result in forfeiture of ARPA funds.

ARP/CSLFRF funds may be used for projects within the following categories of expenditures:

1. Support COVID-19 public health expenditures, by funding COVID-19 mitigation and prevention efforts, medical expenses, behavioral healthcare, preventing and responding to violence, and certain public health and safety staff;
2. Address negative economic impacts caused by the public health emergency, including economic harms to workers, households, small businesses, non-profits, impacted industries, and the public sector;
3. Replace lost public sector revenue, using this funding to provide government services to the extent of the reduction in revenue experienced due to the pandemic;
4. Provide premium pay for essential workers, offering additional support to those who have borne and will bear the greatest health risks because of their service in critical infrastructure sectors; and
5. Invest in water, sewer, and broadband infrastructure, making necessary investments to improve access to clean drinking water, support vital wastewater and stormwater infrastructure, and to expand access to broadband internet.

PROHIBITED USES OF ARPA FUNDING

The ARP/CSLFRF and US Treasury’s Final Rule prohibit certain uses of ARP/CSLFRF funds. Specifically, ARP/CSLFRF funds may not be used for projects within the following categories of expenditures:

1. To make a deposit into a pension fund that constitutes an extraordinary payment of an accrued, unfunded liability (Note that routine contributions as part of a payroll obligation for an eligible project are allowed.);
2. To borrow money or make debt service payments;
3. To replenish rainy day funds or fund other financial reserves;

4. To satisfy an obligation arising from a settlement agreement, judgment, consent decree, or judicially confirmed debt restricting in a judicial, administrative, or regulatory proceeding (There is an exception to this prohibition if the settlement or judgment requires the City of Hendersonville to provide services to respond to the COVID-19 public health emergency or its negative economic impacts or to provide government services, then the costs of those otherwise ARP/CSLFRF-eligible projects are allowed.);
5. For a project that includes a term or condition that undermines efforts to stop the spread of COVID-19 or discourages compliance with recommendations and guidelines in CDC guidance for stopping the spread of COVID-19;
6. In violation of the conflict-of-interest requirements imposed by the award terms and 2 CFR 200.318(c).
7. For any expenditure that would violate other applicable Federal, state, and local laws and regulations.

The City of Hendersonville, and any of its contractors or subrecipients, may not expend any ARP/CSLFRF funds for these purposes.

FUNDING ELIGIBILITY ANALYSIS

The following are procedures for ARP/CSLFRF project approvals. All City of Hendersonville employees and officials must comply with these requirements.

1. For each project, a funding eligibility analysis must be made in writing and include all the following using the form attached to this policy:
 - a. Brief description of the project
 - b. Identification of ARP/CSLFRF Expenditure Category (EC) (A list of ECs in in the Appendix to the US Treasury Compliance and Reporting Guidance.)
 - c. Justifications for applicable projects, according to the requirements in the Final Rule. The Final Rule and Final Rule Overview should be consulted.
 - d. Proposed budget, broken down by cost item, in accordance with the City of Hendersonville's Allowable Cost Policy.
 - e. A project implementation plan and estimated implementation timeline (All ARP/CSLFRF funds must be fully obligated by December 31, 2024, and fully expended by December 31, 2026.)
2. Completed funding eligibility analysis forms must be submitted to Ashley Williams along with any required supporting documentation. If the funding eligibility analysis does not meet the required criteria, it will be returned to the preparer for revision and resubmittal.
3. Following approval, employees responsible for implementing the project must conform actual obligations and expenditures to the pre-approved project budget. Changes in project budgets must be approved by the City Manager or City Council, as appropriate, and may require a budget amendment before proceeding.

Any delay in the projected project completion date shall be communicated to the City Manager and Ashley Williams immediately.

- 4. Departments administering ARP funds must collect and document required information for each EC, for purposes of completing the required Project and Expenditure reports, and submit all information to Ashley Williams who will maintain all supporting documentation and financial information at least until December 31, 2031.

Adopted the ____ day of _____, 2022.

American Rescue Plan Act of 2021 Coronavirus State and Local Fiscal Recover Fund

Funding Eligibility Analysis Form

This document is to be completed by the person or persons requesting American Rescue Plan Act of 2021 Coronavirus State and Local Government Fiscal Recovery Fund monies. The request will proceed through the [LOCAL GOVERNMENT NAME HERE]'s review process. The requestor will receive notice if the project is approved, with instructions on how to proceed.

BASIC INFORMATION AND DESCRIPTION

Program/Project Name:	
Program/Project Description:	
Responsible Department:	
Program/Project Manager Name:	
Total Amount Requested:	
Internal Account Code(s): (assigned by Finance)	
Treasury Expenditure Category Level:	Choose an item.
Treasury Expenditure Category:	Choose an item.

ELIGIBILITY REVIEW

Please select appropriate ARP/CSLFRF Category below and complete the required information. Note that each requested project may only be associated with one of the following categories: 1. Public Health; 2. Negative Economic Impact; 3. Premium Pay; 4. Water, Sewer, Stormwater Infrastructure; 5. Broadband; or 6. Revenue Replacement (Government Services). Please complete all information in the applicable category and attach any required additional justifications and documentation.

Public Health**A. Enumerated Uses/ Safe Harbors (Must select one)**☐ COVID-19 mitigation & prevention*☐ Behavioral health care*☐ Medical expenses*☐ Preventing & responding to violence*☐ Not on Enumerated List (Must complete Box B.)

**See detailed list of enumerated projects in each of these categories on pages 14-16 of the Overview of the Final Rule.*

B. Written Justification (Please provide detailed responses to both these questions if checked “Not on Enumerated List” in Box A)

What is the specific negative public health impact or harm experienced by an individual or a class?

How does proposed project address the negative public health impact or harm?

C. Is the project reasonably designed to benefit the individual or class that experienced a public health impact or harm?

☐ Yes☐ No

D. Is the project related and reasonably proportional to the extent and type of public health impact or harm experienced?

☐ Yes☐ No

E. Does proposed project involve a capital expenditure between \$1 million and \$10 million?

☐ Yes – Proceed to Box F.☐ No – Proceed to Box G.

F. Is proposed project on enumerated list in Box A?

**Written justification must include the following elements:*

Describe the harm or need to be addressed;

Explain why a capital expenditure is appropriate; and

☐ Yes – Record written justification* in file, but not required in Project & Expenditure Reports

☐ No – Record written justification* in file and include in Project &

Compare the proposed capital expenditure to at least two alternative capital expenditures and demonstrate why the proposed capital expenditure is superior.		Expenditure Reports
G. Does the proposed project involve a capital expenditure of \$10 million or more?	<input type="checkbox"/> Yes – Record written justification* for file and include in Project & Expenditure Reports	<input type="checkbox"/> No – No further action required.

Negative Economic Impact

Enumerated Beneficiaries (Must select one)

*See detailed list of enumerated beneficiaries and income on pages 17 & 19 of the Overview of the Final Rule.

Beneficiaries Who Experience Negative Economic Impact from the Pandemic

☐ Low-moderate income households or communities

☐ Household that experienced unemployment

☐ Households that experienced increased food or housing insecurity

☐ Households that qualify for the Children's Health Insurance Program, Childcare Subsidies through the Child Care Development Fund Program, or Medicaid

☐ When providing affordable housing programs: households that qualify for the National Housing Trust Fund and Home Investment Partnerships Program

☐ When providing services to address lost instructional time in K-12 schools: any student that lost access to in-person instruction for a significant period

Beneficiaries Who Experienced Disproportionately Negative Economic Impact from the Pandemic

☐ Low-income households and communities

☐ Households residing in a Qualified Census Tract (QCT)

☐ Households that qualify for Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP), Free- and Reduced-Price Lunch (NSLP) and/or School Breakfast (SBP) programs, Medicare Part D Low-Income Subsidies, Supplemental Security Income (SSI), Head Start and/or Early Head Start, Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), Section 8 Vouchers, Low-Income Home Energy Assistance Program (LIHEAP), and Pell Grants. For services to address educational disparities, Treasury will recognize Title I eligible schools as disproportionately impacted and responsive services that support the school

- ☐ Small business that experienced decreased revenue or gross receipts, increased costs, financial insecurity, or other financial challenges due to the pandemic
- ☐ Nonprofit the experienced decreased revenue, increased costs, financial insecurity, or other financial challenges due to the pandemic
- ☐ Travel, tourism, hospitality industries
- ☐ Other industry that experienced at least 8% employment loss from pre-pandemic levels or is experiencing comparable or worse economic impacts as national tourism, travel, and hospitality sector
- ☐ Local government

- generally or support the whole school as eligible.
- ☐ Small businesses operating in a Qualified Census Tract (QCT)
 - ☐ Nonprofits operating in a Qualified Census Tract (QCT)
 - ☐ Not on enumerated list (Must complete Box B.)

B. Written Justification (Provide detailed response to this question if proposed beneficiary not on enumerated list in Box A)

Define the group/class/geographical area that experienced a negative economic impact from the COVID-19 pandemic. Be specific in defining group/class/area and in defining the negative economic impact to the group/class/area.

Enumerated / Safe Harbor Projects (Must Select One)

Projects for Negatively Economically Impacted

Households & Communities

- ☐ Food assistance & food banks
- ☐ Emergency housing assistance: rental assistance, mortgage assistance, utility assistance, assistance paying delinquent property taxes, counseling and legal aid to prevent eviction and homelessness & emergency programs or services for homeless individuals, including temporary residences for people experiencing homelessness
- ☐ Health insurance coverage expansion
- ☐ Benefits for surviving family members of individuals who have died from COVID-19
- ☐ Assistance to individuals who want and are available for work, including job training, public jobs programs and fairs, support for childcare and transportation to and from a jobsite or interview, incentives for newly- employed workers, subsidized employment, grants to hire underserved workers, assistance to unemployed individuals to start small businesses & development of job and workforce training centers
- ☐ Financial services for the unbanked and underbanked
- ☐ Burials, home repair & home weatherization
- ☐ Programs, devices & equipment for internet access and digital literacy, including subsidies for costs of access
- ☐ Cash assistance
- ☐ Paid sick, medical, and family leave programs
- ☐ Assistance in accessing and applying for public benefits or services
- ☐ Childcare and early learning services, home visiting programs, services for child welfare-involved families and foster youth & childcare facilities
- ☐ Assistance to address the impact of learning loss for K-12 students (e.g., high-quality tutoring, differentiated instruction)
- ☐ Programs or services to support long-term housing

Projects for Disproportionately Negatively Economically Impacted

Households & Communities

- ☐ Pay for community health workers to help households access health & social services
- ☐ Remediation of lead paint or other lead hazards
- ☐ Primary care clinics, hospitals, integration of health services into other settings, and other investments in medical equipment & facilities designed to address health disparities
- ☐ Housing vouchers & assistance relocating to neighborhoods with higher economic opportunity
- ☐ Investments in neighborhoods to promote improved health outcomes
- ☐ Improvements to vacant and abandoned properties, including rehabilitation or maintenance, renovation, removal and remediation of environmental contaminants, demolition or deconstruction, greening/vacant lot cleanup & conversion to affordable housing
- ☐ Services to address educational disparities, including assistance to high-poverty school districts & educational and evidence-based services to address student academic, social, emotional, and mental health needs
- ☐ Schools and other educational equipment & facilities

Small Businesses

- ☐ Rehabilitation of commercial properties, storefront improvements & façade improvements
- ☐ Technical assistance, business incubators & grants for start-up or expansion costs for small businesses
- ☐ Support for microbusinesses, including financial, childcare, and transportation costs

security: including development of affordable housing and permanent supportive housing

Small Businesses

- ☐ Loans or grants to mitigate financial hardship, such as by supporting payroll and benefits, costs to retain employees, and mortgage, rent, utility, and other operating costs
- ☐ Technical assistance, counseling, or other services to support business planning

Nonprofits

- ☐ Loans or grants to mitigate financial hardship
- ☐ Technical or in-kind assistance or other services that mitigate negative economic impacts of the pandemic

Travel, Tourism, Hospitality Industry

- ☐ Aid to mitigate financial hardship, such as supporting payroll costs, lost pay and benefits for returning employees, support of operations and maintenance of existing equipment and facilities
- ☐ Technical assistance, counseling, or other services to support business planning
- ☐ COVID-19 mitigation and infection prevention measures (see section Public Health)

Local Government

- ☐ Public safety, public health, and human services salaries/benefits, to extent responding to the COVID-19 public health emergency
- ☐ Restoring pre-pandemic employment levels
- ☐ Effective service delivery

☐ Not on enumerated list (Must proceed to Box D.)

D. Written Justification (Provide detailed response to this question if proposed project not on enumerated list in Box C.)

What is the specific negative economic impact or harm caused or exacerbated by the pandemic?

How does the proposed project address the impact or harm?

E. Is the project reasonably designed to benefit the individual or class that experienced a public health impact or harm?

☐ Yes

☐ No

F. Is the project related and reasonably proportional to the extent and type of public health impact or harm experienced?

☐ Yes

☐ No

G. Does proposed project involve a capital expenditure between \$1 million and \$10 million?

☐ Yes – Proceed to H.

☐ No – Go to Box I.

H. Is proposed project on enumerated list in Box C?

**Written justification must include the following elements:*

Describe the harm or need to be addressed;

Explain why a capital expenditure is appropriate; and

Compare the proposed capital expenditure to at least two alternative capital expenditures and demonstrate why the proposed capital expenditure is superior.

☐ Yes – Record written justification* for file, but not required in Project & Expenditure Reports

☐ No – Record written justification* for file and include in Project & Expenditure Reports

I. Does the proposed project involve a capital expenditure of \$10 million or more?	<input type="checkbox"/> Yes – Record written justification* for file and include in Project & Expenditure Reports	<input type="checkbox"/> No – No further action needed
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Premium Pay

Please provide description of project and attach any necessary documentation. Must conform with requirements in 31 CFR 35.6(c). (More details on this expenditure category are available [here](#).)

Water, Sewer, Stormwater Infrastructure

Please provide description of project and attach any necessary documentation. Must conform with requirements in 31 CFR 35.6(e)(1).

Broadband Infrastructure

Please provide description of project and attach any necessary documentation. Must conform with requirements in 31 CFR 35.6(e)(2).

Revenue Loss

This portion of ARP/CSLFRF funds may be used for the provision of government services. Please provide description of project and attach any necessary documentation. Note that water, sewer, stormwater, and broadband projects may be funded in this category, without having to meet all of the criteria specified in the other categories.

PROHIBITIONS

VERIFICATION:

By checking these boxes, the [NAME REVIEWING PERSONNEL HERE] attests that the statements are true.

- ☐ Project does not contravene the statutory purpose of ARP, including program, service, or capital expenditure that includes a term or condition that undermines efforts to stop the spread of COVID-19
- ☐ No Conflict of Interest
- ☐ Complies with all state and Federal laws and local ordinance
- ☐ No pension fund deposit
- ☐ No borrowings or debt service
- ☐ No financial reserves

JUSTIFICATION AND LEGAL REVIEW FOR STATE AUTHORITY:

Program Administration Information

Proposed Project Budget, delineated by Cost Item for Allowable Cost Review

U.G. Provisions	Cost Items	Estimated Amount	Necessary/ Reasonable	% Allocable	Required Documentation
<u>200.430</u>	Compensation		Choose an item.		
<u>200.431</u>	Fringe Benefits		Choose an item.		
<u>200.475</u>	Travel		Choose an item.		

<u>200.439</u>	Equipment & Other Capital		Choose an item.		
<u>200.453</u>	Materials & Supplies		Choose an item.		
200.318 & 200.92	Contractual Services & Subawards		Choose an item.		
<u>200.459</u>	Consultants / Professional Services		Choose an item.		
<u>200.465</u>	Occupancy (Rent & Utilities)		Choose an item.		
<u>200.471</u>	Telecommunications		Choose an item.		
<u>200.473</u>	Training & Education		Choose an item.		
<u>200.413</u> (c)	Direct Administrative Costs		Choose an item.		
	Add'l Cost Item		Choose an item.		
	Total Direct Costs		Choose an item.		
<u>200.414</u>	Indirect Costs		Choose an item.		
Total Project Budget					

Administrative Classification

Administration Type	<input type="checkbox"/> In-House	<input type="checkbox"/> Contractor/Vendor	<input type="checkbox"/> Sub-Recipient/Subaward
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If Contractor/Vendor or Sub-recipient, has this been verified using the Classification Checklist?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
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Program Sub-Recipient and/or Contractor List:

Name	Tax ID #	<u>Completion of Classification Checklist?</u>	Contractor or Sub-Recipient	DUNS #/UEI	Date checked SAM.gov
		Choose an item.	Choose an item.		
		Choose an item.	Choose an item.		
		Choose an item.	Choose an item.		

Key Project Dates

Due Date	Task Type	Task Description	Status
	Choose an item.		Choose an item.
	Choose an item.		Choose an item.
	Choose an item.		Choose an item.

Attachment (as needed) to Support Analysis must be attached to this form.

THE CITY OF HENDERSONVILLE POLICY FOR PROGRAM INCOME RELATED TO THE EXPENDITURE OF FEDERAL FUNDS

Recitals

1. The CITY OF HENDERSONVILLE, receives funding in the form of grants, awards, subawards, and loans from the Federal Government, collectively referred to as “award(s)” award(s)” or “grants”; and
2. Federal awards require compliance with the National Objective, and alignment with the Federal Goals for the award; and
3. Federal awards require compliance with the provisions of the Federal Uniform Grant Guidance, 2 CFR Sect. 200 (UG), except as modified by the Federal agency administering the award; and
4. Subpart D, in particular Section 200.307 of Subpart D, details post award requirements related to use of program income generated as a result of the Federal award funded project, except as modified by the Federal agency. Uniform Guidance outlines the how program income is determined and used if not otherwise specified by the Federal agency administering the Federal award.

POLICY OVERVIEW

The purpose of this policy is to comply with the requirements of Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, commonly called Uniform Guidance (UG), specifically Subpart D, Section 200.307 Program Income, as defined below. As a recipient, the City should calculate, document, and record program income generated from a project funded in whole or in part by a Federal award in accordance with 2 CFR § 200.307, or as otherwise directed by the Federal awarding agency. Additional controls should explicitly identify appropriate allocation methods, accounting standards and principles, compliance monitoring checks for program income calculations, and records.

PROGRAM INCOME POLICY

I. PURPOSE AND SCOPE

The City Council for the City of Hendersonville adopts the following procedures for its use of program income earned from the expenditure of Federal awards to ensure compliance with the Uniform Guidance, including, but not limited to, 2 C.F.R. § 200.307, the terms of the Federal award, and all applicable Federal regulations governing the use of program income. The City of Hendersonville agrees to administer program income according to the requirements set forth in this policy and as required by the Federal regulations and State law.

The responsibility for following this policy lies with Finance Department (for oversight) and the Departmental Directors who are charged with the administration and financial oversight of the Federal award. Questions on the use and/or reporting of program income should be directed to the Finance Department.

II. DEFINITIONS¹

- a. *Award or Federal award* means the Federal financial assistance that a recipient receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in § 200.101. The Federal award is the instrument setting forth the terms and conditions of the grant agreement, cooperative agreement, or other agreement for assistance.
- b. *Federal awarding agency* means the Federal agency that provides a Federal award directly to a non-Federal entity.
- c. *Federal financial assistance* means the assistance that non-Federal entities receive or administer in the form of grants, cooperative agreements, non-cash contributions, direct appropriations, food commodities, or other financial assistance, including loans.
- d. *Federal program* means all Federal awards which are assigned a single Assistance Listings Number.
- e. *Non-Federal entity* means a State, local government, Indian tribe, Institution of Higher Education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.
- f. *Period of performance* means the total estimated time interval between the start of an initial Federal award and the planned end date, which may include one or more funded portions, or budget periods.
- g. *Program income* means gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance except as provided in § § 200.307(f).

III. PROGRAM INCOME OVERVIEW

For purposes of this policy, program income is the gross income earned by the City that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance, which closes December 31, 2026. 2 CFR 200.1.

Program income includes, but is not limited to, the following sources of income:

- The collection of fees for services performed.
- Payments for the use or rental of real or personal property.
- The sale of commodities or items fabricated under the Federal award.
- The payment of principal and interest on loans made under the Federal award.

Program income does not include fees or revenue from the following:

- The use of rebates, credits, discounts, and interest earned on any of them.
- Governmental revenues, such as taxes, special assessments, levies, or fines.
- Proceeds from the sale of real property, equipment, or supplies.²

IV. USE OF PROGRAM INCOME

Program income earned pursuant to expenditures of CSLFRF is the property of US Treasury and shall be accounted for in one of three ways pursuant to 2 C.F.R. § 200.307(e).

¹ Excluding the first two, the definitions in this section are found in 2 C.F.R. 200.1.
² 2 C.F.R. 200.1 and 2 C.F.R. 200.307 each define and limit the sources of program income.

Deduction Method: Program income must be deducted from total allowable costs to determine net allowable costs. Program income shall be used to reduce Treasury’s obligation under the Federal award rather than to increase the funds committed a project. Program income shall be used for current costs. The City shall track and account for program income during the period of performance and shall reimburse Treasury, as required. 2 C.F.R. § 200.307(e)(1).

Addition Method: With prior approval, program income may be added to the total amount of the Federal award, thereby increasing the total amount of the award. Program income must be expended on an eligible project or program. 2 C.F.R. § 200.307(e)(2). The City staff should check with the terms of the Federal award, to verify whether the repayment of principal and interest on loans made with Federal funds that will mature or be forgiven on or before the end of the period of performance, may be accounted for using the addition method (see Section VI).

Matching or Cost Sharing Method: With prior approval, program income may be used to meet the cost sharing or matching requirement of the Federal award. The amount of the Federal award shall not change. 2 C.F.R. § 200.307(e)(3).

Unless the Federal award otherwise stipulates or permits, or the City has received prior approval, the City **shall apply the deduction method** to account for the use of program income.

V. ALLOCATION OF PROGRAM INCOME

The City shall only expend program income on costs that are reasonable, allocable, and allowable under the terms of the Federal award.³ To adhere to these requirements, the City shall comply with the cost principles included in 2 C.F.R. § 200, as outlined in the City’s Uniform Guidance allowable cost policy. The City shall allocate program income to the Federal award in proportion to the pro rata share of the total funding (e.g., if CSLFRF funds cover half of a project’s cost, with general revenue covering the other half, the unit shall allocate 50% of any program income earned to the Federal award and account for its use pursuant to § 200.307).

VI. REPAYMENT OF PRINCIPAL AND INTEREST ON LOANS MADE WITH FEDERAL FUNDS

Most Federal agencies expects that a significant share of loans made with Federal funds will be repaid. Accordingly, they may issue guidance on how to appropriately account for the repayment of principal and interest. The City agrees to appropriately account for the return of loan funds according to the Federal award terms, as follows:

- **For Loans that mature or are forgiven on or before the last day of the period of performance for the Federal Award:** The City may add the repayment of principal and interest (program income) to the Federal award. When the loan is made, the City shall report the principal of the loan as an expense. The City shall expend the repayment of principal only on eligible uses and is subject to restrictions on the timing of the use of Federal funds pursuant to the Federal award. Interest payments received prior to the

³ 2 C.F.R. § § 200.404, 408.

end of the period of performance will be considered **an addition** to the total award and may be used for any purpose that is an eligible use. *The City may not subject to restrictions under 2 CFR 200.307(e)(1) (the deduction method) in accounting for the use of program income if allowed by the awarding Federal Agency.*

- **For Loans with maturities longer than the end of the period of performance:** The City is not required to separately account for the repayment of principal and interest on loans that will mature after the Federal award's period of performance. The City may use Federal award funds for only the projected cost of the loan. The City may estimate the subsidy cost of the loan, which equals the expected cash flows associated with the loan discounted at the City's cost of funding. The cost of funding can be determined based on the interest rates of securities with a similar maturity to the cash flow being discounted that were either (i) recently issued by the City or (ii) recently issued by a unit of state, local, or Tribal government similar to the City. If the City has adopted the Current Expected Credit Loss (CECL) standard, it may also treat the cost of the loan as equal to the CECL-based expected credit losses over the life of the loan. The City may measure projected losses either once, at the time the loan is extended, or annually over the covered period. *Under either approach, the City may not be subject to restrictions under 2 CFR 200.307(e)(1) (the deduction method) and need not separately track repayment of principal or interest if allowed by the Federal funding agency.*
- **Revolving Loan Funds:** The City shall treat the contribution of Federal funds to a revolving loan fund according to approach described above for loans with maturities longer than the period of performance. The City may contribute Federal funds to a revolving loan only if the loan is determined to be for eligible use and the Federal funds contributed represent the projected cost of loans made over the life of the revolving loan fund.

Note: City staff should always consult the rules adopting or governing the award as the specific award terms or regulations may vary the provisions in this policy. Specific award terms or award-specific regulations shall be followed where they conflict with the terms of this policy.

VII. ADDITIONAL PROGRAM INCOME REQUIREMENTS

- (a) **Identifying, Documenting, Reporting, and Tracking.** To ensure compliance with the requirements of program income as outlined by the Federal regulations, the terms and conditions of the Federal award, and the requirements set forth herein, each department shall identify potential sources of program income and properly report the program income for the period in which it was earned and dispersed.

Program income shall be accounted for separately. The City shall not commingle program income earned from programs supported by Federal funds with the general award of Federal funds the City received from Treasury. Any costs associated with generating program income revenue shall be charged as expenditures to the Federal award.

- (b) **Program Income Earned After the Period of Performance.** The City shall have may not have any obligation to report program income earned after the period of performance. Agency regulations and award terms should be consulted. However, the City shall report program income expended after the period of performance if that program income was earned on or before the end of the period of performance.

- (c) **Subawards.** The City agrees to ensure that any subrecipient of Federal funds abides by the award of the terms and conditions of this policy and is aware that the subrecipient is responsible for accounting for and reporting program income to the City on a quarterly basis.
- (d) **Compliance with State law.** Program income shall not be expended for purposes prohibited under State law.
- (e) **Subject to Audit.** The City recognizes that its use of program income may be audited and reviewed for compliance with Federal laws and regulations, State law, and the terms of the Federal award.

VIII. IMPLEMENTATION OF POLICY

The Finance Department will adopt procedures to identify potential program income during the project eligibility and allowable cost review, document actual program income, and follow the requirements in this policy related to the treatment of program income. The Finance Department will oversee the implementation and compliance with this policy by the Department Directors administering the Federal award.

Adopted the ____ day of _____, 2022.

THE CITY OF HENDERSONVILLE POLICY FOR ALLOWABLE COSTS AND COST PRINCIPLES FOR EXPENDITURE OF FEDERAL FUNDS

Recitals

1. The CITY OF HENDERSONVILLE, receives funding in the form of grants, awards, subawards, and loans from the Federal Government, collectively referred to as “award(s)” award(s)” or “grants”; and
2. Federal awards require compliance with the National Objective, and alignment with the Federal Goals for the award; and
3. Federal awards require compliance with the provisions of the Federal Uniform Grant Guidance, 2 CFR Sect. 200 (UG), except as modified by the Federal agency administering the award; and
4. Subpart E details post award requirements related to allowable expenditures of Federal funds, except as modified by the Federal agency. Uniform Guidance outlines the types of costs that are allowable, including certain audit costs. For example, per 2 CFR 200.425, a reasonably proportionate share of the costs of audits required by the Single Audit Act Amendments of 1996 are allowable; however, costs for audits that were not performed in accordance with 2 CFR Part 200, Subpart F are not allowable. Please see 2 CFR Part 200, Subpart E regarding the Cost Principles for more information.
5. Subpart E of the UG (specifically, 200.400) states that “The application of these cost principles is based on the fundamental premises that:
 - a. The non-Federal entity is responsible for the efficient and effective administration of the Federal award through the application of sound management practices.
 - b. The non-Federal entity assumes responsibility for administering Federal awards in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the Federal awards.
 - c. The non-Federal entity, in recognition of its own unique combination of staff, facilities, and experience, has the primary responsibility for employing whatever form of sound organization and management techniques may be necessary in order to assure proper and efficient administration of the Federal award.
 - d. The application of these cost principles should require no significant changes in the internal accounting policies and practices of the non-Federal entity. However, the accounting practices of the non-Federal entity must be consistent with these cost principles and support the accumulation of costs as required by the principles, and must provide for adequate documentation to support costs charged to the Federal award.
 - e. In reviewing, negotiating and approving cost allocation plans or indirect cost proposals, the cognizant agency for indirect costs should generally assure that the non-Federal entity is applying these cost accounting principles on a consistent basis during their review and negotiation of indirect cost proposals. Where wide variations exist in the treatment of a given cost item by the non-Federal entity, the reasonableness and equity of such treatments should be fully considered.
 - f. For non-Federal entities that educate and engage students in research, the dual role of students as both trainees and employees (including pre- and post-doctoral staff) contributing to the completion of Federal awards for research must be recognized in the application of these principles.
 - g. The non-Federal entity may not earn or keep any profit resulting from Federal financial assistance, unless explicitly authorized by the terms and conditions of the Federal award;

POLICY OVERVIEW

The purpose of this policy is to comply with the requirements of [Title 2 U.S. Code of Federal Regulations, 200](#), Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, commonly called Uniform Guidance (UG), specifically Subpart E, defines those items of cost that are allowable, and which are unallowable. The tests of allowability under these principles are: (a) the costs must be reasonable; (b) they must be allocable to eligible projects under the regulations governing the Federal funding; (c) they must be given consistent treatment through application of those generally accepted accounting principles appropriate to the circumstances; and (d) they must conform to any limitations or exclusions set forth in these principles or in the Federal grant award as to types or amounts of cost items. Unallowable items fall into two categories: expenses which are by their nature unallowable (e.g., alcohol), and unallowable activities (e.g., fund raising).

As a recipient, the City is responsible for the effective administration of Federal awards, application of sound management practices, and administration of Federal funds in a manner consistent with the program objectives and terms and conditions of the award. Recipients must implement robust internal controls and effective monitoring to ensure compliance with the Cost Principles, which are important for building trust and accountability. It should be noted that North Carolina law also applies to the acquisition, management and expenditure of funds. Therefore, to the extent that the provisions of North Carolina law conflict with the UG, the most restrictive shall control. Lastly, the UG applies to the extent that requirements are not modified by the Federal funding agency; therefore funding agency regulations shall preempt the UG with regards to the expenditure of Federal funds for a particular project or program.

POLICY

The City of Hendersonville shall adhere to all applicable cost principles governing the use of Federal awards. This policy addresses the proper classification of both direct and indirect charges to Federally-funded projects and enacts procedures to ensure that proposed and actual expenditures are consistent with the Federal award terms and all applicable Federal regulations in the UG.

Responsibility for following these guidelines lies with the Finance Department (as to oversight) and the Departmental Directors who are charged with the administration and financial oversight of the Federal award. Further, all local government employees and officials who are involved in obligating, administering, expending, or monitoring Federally funded projects should be well versed with the categories of costs that are generally allowable and unallowable by the award terms and applicable Federal regulations. Questions on the allowability of costs should be directed to the Finance Department. As questions on allowability of certain costs may require interpretation and judgment, local government personnel are encouraged to ask for assistance in making those determinations.

GENERAL COST ALLOWABILITY CRITERIA

All costs expended using Federal funds must meet the following general criteria, unless modified by the Federal funding agency:

1. Be necessary and reasonable for the proper and efficient performance and administration of the Federal grant/award/subaward/loan program.

A cost must be *necessary* to achieve a project object. When determining whether a cost is necessary, consideration may be given to:

- Whether the cost is needed for the proper and efficient performance of the grant project.
- Whether the cost is identified in the approved project budget or application.
- Whether the cost aligns with identified needs based on results and findings from a needs assessment.
- Whether the cost addresses project goals and objectives and is based on program data.

A cost is *reasonable* if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision to incur the cost was made. For example, reasonable means that sound business practices were followed, and purchases were comparable to market prices. When determining reasonableness of a cost, consideration must be given to:

- Whether the cost is a type generally recognized as ordinary and necessary for the operation of the City of Hendersonville or the proper and efficient performance of the Federal award.
- The restraints or requirements imposed by factors, such as: sound business practices; arm's-length bargaining; Federal, state, and other laws and regulations; and terms and conditions of the Federal award.
- Market prices for comparable goods or services for the geographic area.
- Whether individuals concerned acted with prudence in the circumstances considering their responsibilities to City of Hendersonville, its employees, the public at large, and the Federal government.
- Whether City of Hendersonville significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the Federal award's cost.

- 2. Be allocable to the Federal award.** A cost is allocable to the Federal award if the goods or services involved are chargeable or assignable to the Federal award in accordance with the relative benefit received. This means that the Federal grant program derived a benefit in proportion to the funds charged to the program. *For example, if 50 percent of a local government program officer's salary is paid with grant funds, then the local government must document that the program officer spent at least 50 percent of his/her time on the grant program.*

If a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost must be allocated to the projects based on the proportional benefit. If a cost benefits two or more projects or activities in proportions that cannot be determined because of the interrelationship of the work involved, then the costs may be allocated or transferred to benefitted projects on any reasonable documented basis. Where the purchase of equipment or other capital asset is specifically authorized by the Federal award, the costs are assignable to the Federal award regardless of the use that may be made of the equipment or other capital asset involved when no longer needed for the purpose for which it was originally required.

- 3. Be authorized and not prohibited under state or local laws or regulations.**
- 4. Conform to any limitations or exclusions set forth in the principles, Federal laws, Federal award terms, and other governing regulations as to types or amounts of cost items.**
- 5. Be consistent with policies, regulations, and procedures that apply uniformly to both the Federal award and other activities of City of Hendersonville.**
- 6. Be accorded consistent treatment.** A cost MAY NOT be assigned to a Federal award as a direct cost and also be charged to a Federal award as an indirect cost. And a cost must be treated consistently for both Federal award and non-Federal award expenditures.
- 7. Be determined in accordance with generally accepted accounting principles (GAAP), unless provided otherwise in the UGG.**

- 8. Be net of all applicable credits.** The term “applicable credits” refers to those receipts or expenditures that operate to offset or reduce expense items allocable to the Federal award. Typical examples of such transactions are purchase discounts; rebates or allowances; recoveries or indemnities on losses; and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to and received by the local government related to the Federal award, they shall be credited to the Federal award, either as a cost reduction or a cash refund, as appropriate and consistent with the award terms. Reference is made to the City of Hendersonville Uniform Guidance Program Income Policy [to be adopted].
- 9. Be adequately documented.**

SELECTED ITEMS OF COST

The UGG examines the allowability of fifty-five (55) specific cost items (commonly referred to as Selected Items of Cost) at 2 CFR § 200.420-.475.

City personnel responsible for determining cost allowability must be familiar with the Selected Items of Cost. The City of Hendersonville must follow the applicable regulations when charging these specific expenditures to the Federal award. Finance Department personnel will check costs against the selected items of cost requirements to ensure the cost is allowable and that all process and documentation requirements are followed. In addition, State laws, City of Hendersonville regulations, and program-specific rules may deem a cost as unallowable, and City personnel must follow those non-Federal rules as well.

Exhibit A identifies and summarizes the Selected Items of Cost.

DIRECT AND INDIRECT COSTS

Allowable and allocable costs must be appropriately classified as direct or indirect charges. It is essential that each item of cost be treated consistently in like circumstances either as a direct or an indirect cost.

Direct costs are expenses that are specifically associated with a particular Federally eligible project and that can be directly assigned to such activities relatively easily with a high degree of accuracy. Common examples of direct costs include salary and fringe benefits of personnel directly involved in undertaking an eligible project, equipment and supplies for the project, subcontracted service provider, or other materials consumed or expended in the performance of a grant-eligible project.

Indirect costs are (1) costs incurred for a common or joint purpose benefitting more than one Federally-eligible project, and (2) not readily assignable to the project specifically benefited, without effort disproportionate to the results achieved. They are expenses that benefit more than one project or even more than one Federal grant. Common examples of indirect costs include utilities, local telephone charges, shared office supplies, administrative or secretarial salaries.

For indirect costs, the City of Hendersonville may charge a 10 percent de minimis rate of modified total direct costs (MTDC). According to UGG Section 200.68 MTDC means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward (regardless of the period of performance the subawards under the award). MTDC EXCLUDES equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward in excess of \$25,000.

If the City has or establishes a Negotiated Indirect Costs Rate Agreement (NICRA) with a Federal cognizant agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals, the City, but is not required to, use the NICRA rate to calculate indirect costs for its Federal awards.

SPECIAL PROVISIONS FOR STATE AND LOCAL GOVERNMENTS

There are some special provisions of the UG that apply only to states, local governments, and Indian Tribes, some of which are restated for convenience below.

§ 200.444 General costs of government.

(a) For states, local governments, and Indian Tribes, the general costs of government are unallowable (except as provided in [§ 200.475](#)). Unallowable costs include:

- (1) Salaries and expenses of the Office of the Governor of a [state](#) or the chief executive of a [local government](#) or the chief executive of an [Indian tribe](#);
- (2) Salaries and other expenses of a [state](#) legislature, tribal council, or similar local governmental body, such as a county supervisor, city council, school board, etc., whether incurred for purposes of legislation or executive direction;
- (3) Costs of the judicial branch of a government;
- (4) Costs of prosecutorial activities unless treated as a direct cost to a specific program if authorized by statute or regulation (however, this does not preclude the allowability of other legal activities of the Attorney General as described in [§ 200.435](#)); and
- (5) Costs of other general types of government services normally provided to the general public, such as fire and police, unless provided for as a direct cost under a program statute or regulation.

(b) For [Indian tribes](#) and Councils of Governments (COGs) (see definition for *Local government* in [§ 200.1](#) of this part), up to 50% of salaries and expenses directly attributable to managing and operating [Federal programs](#) by the chief executive and his or her staff can be included in the indirect cost calculation without documentation.

§ 200.416 COST ALLOCATION PLANS AND INDIRECT COST PROPOSALS.

(a) For states, local governments and Indian tribes, certain services, such as motor pools, computer centers, purchasing, accounting, etc., are provided to operating agencies on a centralized basis. Since Federal awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan provides that process.

(b) Individual operating agencies (governmental department or agency), normally charge Federal awards for indirect costs through an indirect cost rate. A separate indirect cost rate(s) proposal for each operating agency is usually necessary to claim indirect costs under Federal awards. Indirect costs include:

- (1) The indirect costs originating in each department or agency of the governmental unit carrying out Federal awards and
 - (2) The costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.
- (c) The requirements for development and submission of cost allocation plans (for central service costs and public assistance programs) and indirect cost rate proposals are contained in appendices V, VI and VII to this part.

§ 200.417 INTERAGENCY SERVICE.

The cost of services provided by one agency to another within the governmental unit allowable direct costs of the service plus a pro-rated share of indirect costs. A standard indirect cost allowance equal to ten percent of the direct salary and wage cost of providing the service (excluding overtime, shift premiums, and fringe benefits) may be used in lieu of determining the actual indirect costs of the service. These services do not include centralized services included in central service cost allocation plans as described in Appendix V to Part 200.

COST ALLOWABILITY REVIEW PROCESS

PREAPPROVAL COST ALLOWABILITY REVIEW

Before a Federally-funded project is authorized, the City Manager's designee must review the proposed cost items within an estimated project budget to determine whether they are allowable and allocable and whether cost items will be charged as direct or indirect expenses. This review will occur concurrently with the review of project eligibility and *before* obligating or expending any Federal award funds.

- Local government personnel must submit proposed projects to the City Manager's designee for review. In addition to other required information, all proposed project submissions must delineate estimated costs by cost item and, using the form prepared by the City Manager's designee, analyze the appropriateness of all costs under the terms of the Uniform Guidance and the Federal award (if different) (see Exhibit A attached to this policy for reference).
- Along with a general review of project eligibility and conformance with other governing board management directives, the City Manager's designee must review the submitted estimated costs for specific allowable cost requirements, budget parameters, indirect rates, fringe benefit rates, and those activities/costs that require pre-approval by the US Treasury. Reference is made to the City's Eligibility Determination Policy.
- If a proposed project includes a request for an unallowable cost, the City Manager's designee will return the proposal to the requesting party for review and, if practicable, resubmission with corrected cost items.
- Once a proposed project budget is pre-approved by the City Manager's designee, the local government personnel responsible for implementing the project must conform actual obligations and expenditures to the pre-approved project budget.

POST-EXPENDITURE COST ALLOWABILITY REVIEW

Once an expenditure is incurred related to an eligible project, and an invoice or other demand for payment is submitted to the local government, the City Manager's designee must perform a second review to ensure that actual expenditures comprise allowable costs.

- All invoices or other demands for payment must include a breakdown by cost item. The cost items should mirror those presented in the proposed budget for the project. If an invoice or other demand for payment does not include a breakdown by cost item, the City Manager's designee will return the invoice to the project manager and/or vendor, contractor, or subrecipient for correction.
- The the City Manager's designee must review the individual cost items listed on the invoice or other demand for payment to determine their allowability and allocability.

- If all cost items are deemed allowable and properly allocable, the City Manager's designee through the local government's normal disbursement process.
- If any cost item is deemed unallowable, the City Manager's designee will notify the project manager and/or vendor, contractor, or subrecipient that a portion of the invoice or other demand for payment will not be paid with the Federal funds. The City Manager's designee may in their discretion, and consistent with this policy, allow an invoice or other demand for payment to be resubmitted with a revised cost allocation. If the local government remains legally obligated by contract or otherwise to pay the disallowed cost item, it must identify other local government funds to cover the disbursement. City of Hendersonville's governing board must approve any allocation of other funds for this purpose.
- The City Manager's designee must retain appropriate documentation of budgeted cost items per project and actual obligations and expenditures of cost items per project.

COST TRANSFERS

Any costs charged to the Federal award that do not meet the allowable cost criteria must be removed from the award account and charged to an account that does not require adherence to Federal UGG or other applicable guidelines.

Failure to adequately follow this policy and related procedures could result in questioned costs, audit findings, potential repayment of disallowed costs and discontinuance of funding.

ADOPTED THE _____ DAY OF _____, 2022.

EXHIBIT A

Section 5, Item L.

Selected Items of Cost	Uniform Guidance General Reference	Allowability
Advertising and public relations costs	2 CFR § 200.421	Allowable with restrictions
Advisory councils	2 CFR § 200.422	Allowable with restrictions
Alcoholic beverages	2 CFR § 200.423	Unallowable
Alumni/ae activities	2 CFR § 200.424	Not specifically addressed
Audit services	2 CFR § 200.425	Allowable with restrictions
Bad debts	2 CFR § 200.426	Unallowable
Bonding costs	2 CFR § 200.427	Allowable with restrictions
Collection of improper payments	2 CFR § 200.428	Allowable
Commencement and convocation costs	2 CFR § 200.429	Not specifically addressed
Compensation – personal services	2 CFR § 200.430	Allowable with restrictions; Special conditions apply (e.g., § 200.430(i)(5))
Compensation – fringe benefits	2 CFR § 200.431	Allowable with restrictions
Conferences	2 CFR § 200.432	Allowable with restrictions

Contingency provisions	2 CFR § 200.433	Unallowable with exceptions
Contributions and donations	2 CFR § 200.434	Unallowable (made by non-Federal entity); not reimbursable but value may be used as cost sharing or matching (made to non-Federal entity)
Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements	2 CFR § 200.435	Allowable with restrictions
Depreciation	2 CFR § 200.436	Allowable with qualifications
Employee health and welfare costs	2 CFR § 200.437	Allowable with restrictions
Entertainment costs	2 CFR § 200.438	Unallowable with exceptions
Equipment and other capital expenditures	2 CFR § 200.439	Allowability based on specific requirement
Exchange rates	2 CFR § 200.440	Allowable with restrictions
Fines, penalties, damages and other settlements	2 CFR § 200.441	Unallowable with exceptions
Fund raising and investment management costs	2 CFR § 200.442	Unallowable with exceptions
Gains and losses on disposition of depreciable assets	2 CFR § 200.443	Allowable with restrictions
General costs of government	2 CFR § 200.444	Unallowable with exceptions
Goods and services for personal use	2 CFR § 200.445	Unallowable (goods/services); allowable (housing) with restrictions
Idle facilities and idle capacity	2 CFR §	Idle facilities - unallowable with

	200.446		exceptions; Idle capacity - allowable with restrictions
Insurance and indemnification	2 CFR § 200.447		Allowable with restrictions
Intellectual property	2 CFR § 200.448		Allowable with restrictions
Interest	2 CFR § 200.449		Allowable with restrictions
Lobbying	2 CFR § 200.450		Unallowable
Losses on other awards or contracts	2 CFR § 200.451		Unallowable (however, they are required to be included in the indirect cost rate base for allocation of indirect costs)
Maintenance and repair costs	2 CFR § 200.452		Allowable with restrictions
Materials and supplies costs, including costs of computing devices	2 CFR § 200.453		Allowable with restrictions
Memberships, subscriptions, and professional activity costs	2 CFR § 200.454		Allowable with restrictions; unallowable for lobbying organizations
Organization costs	2 CFR § 200.455		Unallowable except Federal prior approval
Participant support costs	2 CFR § 200.456		Allowable with prior approval of the Federal awarding agency
Plant and security costs	2 CFR § 200.457		Allowable; capital expenditures are subject to § 200.439
Pre-award costs	2 CFR § 200.458		Allowable if consistent with other allowabilities and with prior approval of the Federal awarding agency

Professional services costs	2 CFR § 200.459	Allowable with restrictions
Proposal costs	2 CFR § 200.460	Allowable with restrictions
Publication and printing costs	2 CFR § 200.461	Allowable with restrictions
Rearrangement and reconversion costs	2 CFR § 200.462	Allowable (ordinary and normal)
Recruiting costs	2 CFR § 200.463	Allowable with restrictions
Relocation costs of employees	2 CFR § 200.464	Allowable with restrictions
Rental costs of real property and equipment	2 CFR § 200.465	Allowable with restrictions
Scholarships and student aid costs	2 CFR § 200.466	Not specifically addressed
Selling and marketing costs	2 CFR § 200.467	Unallowable with exceptions
Specialized service facilities	2 CFR § 200.468	Allowable with restrictions
Student activity costs	2 CFR § 200.469	Unallowable unless specifically provided for in the Federal award
Taxes (including Value Added Tax)	2 CFR § 200.470	Allowable with restrictions
Termination costs	2 CFR § 200.471	Allowable with restrictions
Training and education costs	2 CFR § 200.472	Allowable for employee development

Transportation costs	2 CFR § 200.473	Allowable with restrictions
Travel costs	2 CFR § 200.474	Allowable with restrictions
Trustees	2 CFR § 200.475	Not specifically addressed



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: John Connet, City Manager **MEETING DATE:** May 5, 2022
AGENDA SECTION: CONSENT **DEPARTMENT:** Administration
TITLE OF ITEM: Resolution to Approve Interlocal Agreement for Ecusta Trail Construction
Between S. Main and Kanuga Road

SUGGESTED MOTION(S):

I move City Council to adopt the *Resolution to Approve Interlocal Agreement for Ecusta Trail Construction Between S. Main and Kanuga Road* as presented.

SUMMARY:

Attached for City Council's consideration is a proposed Resolution to Approve Interlocal Agreement for Ecusta Trail Construction Between S. Main and Kanuga Road. This would allow the City to pay the County a lump sum of \$46,000 towards the design and engineering costs associated with the construction of the Ecusta Trail from the City's S. Main property to Kanuga Road.

ATTACHMENTS:

Resolution
Draft Interlocal Agreement

Resolution #__-____

**RESOLUTION TO APPROVE INTERLOCAL AGREEMENT FOR ECUSTA TRAIL
CONSTRUCTION BETWEEN S. MAIN AND KANUGA ROAD**

WHEREAS, Henderson County is the Tenant of the property, owned by the Ecusta Rails2Trail, LLC, a North Carolina nonprofit corporation (“*ER2T*”), obtained by *ER2T* by way of that special warranty deed recorded in Book of Record 2764 at Page 590 of the Henderson County Registry, for the development of a greenway along the former railroad corridor, running from Transylvania County to a point in Henderson County (the “*R2T Property*”); and

WHEREAS, the lease (the “*Lease*”) between Henderson County and *ER2T* dated November 1, 2021, for the *R2T Property* provides that the County will construct and maintain a greenway within the portions of the *R2T Property* lying in Henderson County (the “*R2T Greenway*”); and

WHEREAS, Henderson County has agreed to begin the *R2T Greenway* in Henderson County at a property owned by the City of Hendersonville on South Main Street, said property having a PIN of 9568850368, having been acquired by the City pursuant to that deed recorded in Book 1357 at Page 559 of the Henderson County Registry, (the “*South Main Property*”) and the City has agreed to contribute a lump sum amount of \$46,000.00 to be used for engineering costs associated with the construction of the *R2T Greenway* from the *South Main Property* to Kanuga Road; and

WHEREAS, Henderson County and the City of Hendersonville wish to enter into an interlocal agreement as allowed by N.C.G.S. Chapter 160A, Article 20, to carry out these terms as agreed.

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

1. The Interlocal Agreement between Henderson County and the City of Hendersonville providing for the construction of the *R2T Greenway* from the *South Main Property* to Kanuga Road, and the City’s payment of \$46,000 towards the cost of engineering and design is approved 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

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

INTERLOCAL AGREEMENT

This Interlocal Agreement is entered between the City of Hendersonville, a North Carolina municipal corporation (the “*City*”), and the County of Henderson, a body corporate and politic of the State of North Carolina (the “*County*”) pursuant to the authority granted in NCGS Chapter 160A, Article 20, to be effective the 1st day of June, 2022.

Recitals

A. The *County* is the Tenant of the property, owned by the Ecusta Rails2Trail, LLC, a North Carolina nonprofit corporation (“*ER2T*”), obtained by *ER2T* by way of that special warranty deed recorded in Book of Record 2764 at Page 590 of the Henderson County Registry, for the development of a greenway along the former railroad corridor, running from Transylvania County to a point in Henderson County (the “*R2T Property*”).

B. The lease (the “*Lease*”) between the *County* and *ER2T* dated November 1, 2021, for the *R2T Property* provides that the *County* will construct and maintain a greenway within the portions of the *R2T Property* lying in Henderson County (the “*R2T Greenway*”).

C. The *County* has agreed to begin the *R2T Greenway* in Henderson County at a property owned by the *City* on South Main Street, Hendersonville, said property having a PIN of 9568850368, having been acquired by the *City* pursuant to that deed recorded in Book 1357 at Page 559 of the Henderson County Registry, (the “*South Main Property*”) and the *City* has agreed to contribute a lump sum amount of \$46,000.00 to be used for engineering costs associated with the construction of the *R2T Greenway* from the *South Main Property* to Kanuga Road.

E. The parties have agreed to the arrangement as set out below as in the best interest of all of them and their citizenry.

Agreement

1. The Recitals A-E are incorporated herein as an integral part of this Agreement.

2. The *County* shall construct the *R2T Greenway* from the *South Main Property* to Kanuga Road, in accordance with the same standards and design principals for the balance of the *R2T Greenway* in Henderson County, as part of the first phase of construction for the *R2T Greenway* in Henderson County.

3. The *City* shall pay to the *County* a lump sum of \$46,000.00 to be used for design and engineering of the portion of the *R2T Greenway* running from the *South Main*

Property to Kanuga Road. The *County* agrees to refund to the *City* any unused portion of the \$46,000 at the closeout of the first phase of construction for the *R2T Greenway* in Henderson County.

4. This Interlocal Agreement may only be terminated or modified by the mutual agreement of the parties hereto.

Executed by the parties, as of the date shown above.

COUNTY OF HENDERSON

By: _____
WILLIAM G. LAPSLEY, Chairman of the Henderson
County Board of Commissioners

Attest: (Official Seal)

Clerk, Henderson County Board of Commissioners

CITY OF HENDERSONVILLE

By: _____
BARBARA VOLK, Mayor

Attest: (Official Seal)

Clerk, Henderson County Board of Commissioners

This agreement has been pre-audited in that manner required by the Local Government Fiscal Control Act.

Finance Director for the City of Hendersonville



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: Lu Ann Welter **MEETING DATE:** May 5, 2022

AGENDA SECTION: Presentation Only **DEPARTMENT:** Human Resources

**TITLE OF ITEM,
Presenter Name, Title:** Quarterly MVP Recipients – *John Connet, City Manager*

SUGGESTED MOTION(S): None

SUMMARY:

The Service Excellence Design Team voted these employees as the MVPs for the January through March quarter of 2022.

BUDGET IMPACT: \$

Is this expenditure approved in the current fiscal year budget? 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:

PowerPoint Presentation

ATTACHMENTS:	<ol style="list-style-type: none">1. Ordinance2. Signed Certificate of Sufficiency3. Signed Resolution setting public hearing4. Certification of public notice5. Annexation Plat6. Typed legal description7. GIS map8. Deed9. Annexation Application10. Appalachian Dew LLC documents
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Ordinance #____-____

**AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO
EXTEND THE CORPORATE LIMITS OF THE CITY AS A CONTIGUOUS
ANNEXATION**

Re: Petition for Contiguous Annexation
Petitioners: Appalachian Dew, LLC (Samuel R. Henderson, Vice President)
File No. C22-21-ANX

WHEREAS, The City of Hendersonville has been petitioned by Samuel R. Henderson of Appalachian Dew, LLC. pursuant to North Carolina General Statutes (NCGS) 160A-31, as amended, to annex the area described herein below; and,

WHEREAS, the City Clerk has investigated and certified the sufficiency of said petition; and,

WHEREAS, a public hearing on the question of this annexation was held at 305 Williams Street (City Operations Center), Hendersonville, NC at 5:45 pm, on the 5th day of May, 2022, after due notice by publication as provided by law on April 24th, 2022; and,

WHEREAS, the City Council further finds the areas described therein meets the standards of N.C. G.S. 160A-31.

WHEREAS, the City further finds that the petition has been signed by all the owners of real property in the area who are required by law to sign; and

WHEREAS, the City further finds that the petition is otherwise valid, and that the public health, safety and welfare of the City and of the area proposed for annexation will be best served by annexing the area described;

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

- 1: By virtue of the authority granted by N.C.G.S. 160A-58.2, as amended, the following described contiguous area is hereby annexed and made part of the City of Hendersonville as of the fifth day of May 2022.

Being all of that real property shown on that annexation plat recorded in Plat Book 2022 at Page _____ of the Henderson County Registry, and being also all of that real property shown on that plat recorded on Deed Book 3868; pages 411-412, and shown on Plat Slide 10786 of the Henderson County Registry, and being described by metes and bounds as follows:

Situated in the City of Hendersonville, Henderson County, North Carolina and being more particularly described as follows:

Commencing at an existing iron pin on the eastern margin of Old Spartanburg Road and being the northwest corner of Lot 1 as shown on Plat Slide 10786 as recorded in the Register of Deeds for Henderson County, North Carolina and running with the northern line of Lot 1 N58-03-07E for a distance of 191.68 feet to the Point of Beginning being the northwest corner of Lot 4 as shown on Plat Slide 10786, thence running N58-03-07E for a distance of 210.85 feet to an existing bedrail; thence running S36-45-28E for a distance of 168.69 feet to a point; thence running S36-16-28E for a distance of 47.89 feet to an existing iron pin; thence running with an unnamed private gravel road S50-41-48W for a distance of 245.62 feet to an existing iron pin; thence running N28-28-41W for a distance of 247.75 feet with the boundary of the City of Hendersonville to an existing iron pin being the Point of Beginning.

Said property contains 1.21 Acres more or Less

- 2: Upon and after the fifth day of May 2022, the above-described territory, and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Hendersonville and shall be entitled to the same privileges and benefits as other parts of the City of Hendersonville. Said territory shall be subject to municipal taxes according to NCGS 160A-58.10, as amended.
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 at the Office of the Secretary of State in 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 also be delivered to the Henderson 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, _____, 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 personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this _____ day of _____, 20____.

My commission expires:

Section 7, Item A.

Tax Parcels: 9578-52-1337, 9578-52-0340

Owner: FOR APPALACHIAN DEW, LLC, a North Carolina Limited Liability Company

Situated in the City of Hendersonville, Henderson County, North Carolina and being more particularly described as follows:

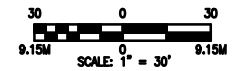
Commencing at an existing iron pin on the eastern margin of Old Spartanburg Road and being the northwest corner of Lot 1 as shown on Plat Slide 10786 as recorded in the Register of Deeds for Henderson County, North Carolina and running with the northern line of Lot 1 N58-03-07E for a distance of 191.68 feet to the Point of Beginning being the northwest corner of Lot 4 as shown on Plat Slide 10786, thence running N58-03-07E for a distance of 210.85 feet to an existing bedrail; thence running S36-45-28E for a distance of 168.69 feet to a point; thence running S36-16-28E for a distance of 47.89 feet to an existing iron pin; thence running with an unnamed private gravel road S50-41-48W for a distance of 245.62 feet to an existing iron pin; thence running N28-28-41W for a distance of 247.75 feet with the boundary of the City of Hendersonville to an existing iron pin being the Point of Beginning.

Said property contains 1.21 Acres more or Less

PURPOSE STATEMENT
THE PURPOSE OF THIS PLAT IS TO ANNEX PARCELS 9578520340 AND 9578521337 IN THE CITY OF HENDERSONVILLE AS SHOWN ON THIS SURVEY

NOTES:

- 1 This property may be subject to any easements, rights of ways, and/or restrictive covenants.
 - 2 Boundary information based on Deed Book 3183, pg. 1 and Plat Book 2017, Slide 10786 as recorded in the Henderson County Register of Deeds.
 - 3 This survey is of existing parcels of land and does not create a new street or change an existing street.
 - 4 All dimensions shown are in US survey feet and decimals thereof and are horizontal ground distances unless otherwise indicated. Area by coordinate method.
 - 5 Points not labeled "Existing" or "New" are calculated points only.
 - 6 This survey was prepared without the benefit of a title examination by an attorney. The property may be subject to recorded or unrecorded rights-of-way, easement, restrictive covenants or conditions not observed or shown hereon.
 - 7 This property is located within Zone 'X' according to flood insurance rate map community panel 3700957800J, dated 10/02/2008.
 - 8 Subject property is zoned R15
- Setbacks:
Front: 30'
Side: 10'
Rear: 15'



ANNEXATION PLAT TO THE
CITY OF HENDERSONVILLE
1448 & 1450 Old Spartanburg Road
Hendersonville Township, Henderson County
State of North Carolina
FNS 9578520340, 9578521337
FOR APPALACHIAN DEW, LLC, a North Carolina
Limited Liability Company
OWNER



FREELAND - CLINKSCALES
& ASSOCIATES, INC. of NC
Engineers & Land Surveyors
201 2nd AVE. EAST
HENDERSONVILLE, N.C. 28792
(828) 297-6530
fcaofnc@outlook.com

REF. PLAT BOOK	2017/10786
REF. DEED BOOK	3183/1
TAX MAP	957
PARTY CHIEF	196
DRAWN	196
DATE	MARCH 2, 2022
DRAWN	142070

LEGEND:

	NIP NEW IRON PIN (5/8" REBAR)
	EIP EXISTING IRON PIN
	CP CALCULATED POINT ONLY
	POWER POLE
	LIGHT POLE
	WATER VALVE
	GAS VALVE
	WATER METER
	FIRE HYDRANT
	SANITARY SEWER MANHOLE
	STORM DRAIN MANHOLE
	CATCH BASIN
	CLEANOUT
	CURB INLET
	TRANSFORMER
	OVERHEAD POWER LINE
	FENCE LINE
	OLD SPARTANBURG ROAD
	UNNAMED PRIVATE GRAVEL ROAD
	EXISTING GRAVEL DRIVE
	EXISTING CITY BOUNDARY
	ANNEXATION BOUNDARY
	20' EASEMENT PER PLAT SLIDE 10786
	15' SETBACK
	10' SETBACK
	30' SETBACK
	24' RIGHT OF WAY
	20' RIGHT OF WAY
	15' RIGHT OF WAY
	10' RIGHT OF WAY
	5' RIGHT OF WAY
	2' RIGHT OF WAY
	1' RIGHT OF WAY
	0.5' RIGHT OF WAY
	0.25' RIGHT OF WAY
	0.125' RIGHT OF WAY
	0.0625' RIGHT OF WAY
	0.03125' RIGHT OF WAY
	0.015625' RIGHT OF WAY
	0.0078125' RIGHT OF WAY
	0.00390625' RIGHT OF WAY
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	0.00000000000000000000000010339757656911654510633816861488104722234375' RIGHT OF WAY
	0.000000000000000000000000051698788284558272553169084307440521111171875' RIGHT OF WAY
	0.00000000000000000000000002584939414227913627658454215372026055589375' RIGHT OF WAY

CERTIFICATE OF SUFFICIENCY

Re: Petition for Contiguous Annexation
Petitioners: Appalachian Dew, LLC (Samuel R. Henderson, Vice President)
File No. C22-21-ANX

To the Honorable Mayor and members of the City Council of Hendersonville, North Carolina:
I, Angela L. Reece, City Clerk, being first duly sworn, hereby certify that:

1. A petition has been received for contiguous annexation of properties consisting of +/- 1.21 acres located on Old Spartanburg Road in Hendersonville, NC, being tax parcel(s) PIN 9578-52-0340, and 9578-52-1337, and being more particularly described on Exhibit A, attached hereto and incorporated by reference, hereinafter "Petition."
2. An investigation has been completed as required by N.C.G.S. § 160A-58.2 of the Petition for compliance with the requirements of N.C.G.S. § 160A-58.1.

Based upon this investigation, I find that

1. The Petition includes a metes and bounds description of the area proposed for annexation and has attached a map showing the proposed contiguous area.
2. The Petition includes the names and addresses and signatures of all owners of real property lying in the area described therein, except those not required to sign by G.S.160A-58.1 (a).
3. The area is situated so the City will be able to provide the same services within the proposed corporate limits that is provided within the primary corporate limits.
4. The area for annexation meets all other requirements defined in NC 160A-58.54 regarding the character of the area to be annexed.

Having made the findings stated above, I hereby certify the Petition appears to be valid.

In witness hereof, I have set my hand and the City Seal on this the 7 day of April, 2022.

(City Seal)


Angela L. Reece, City Clerk

Resolution #R-22-47

RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL FIXING DATE OF PUBLIC HEARING ON QUESTION OF ANNEXATION PURSUANT TO G.S. 160A-58.2

WHEREAS, a petition requesting annexation of the contiguous area described herein has been received; and

WHEREAS, certification by the City Clerk as to the sufficiency of the petition has been made;

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

Section 1. A public hearing on the question of annexation of the contiguous area described herein will be held at City Operations Center located at 305 William St. Hendersonville NC, 28792 at 5:45 p.m. May 5th, 2022, or as soon thereafter as it may be heard.

Section 2. The area proposed for annexation is described as follows:

BEING all of that real property consisting of PINs 9578-52-1337 and 9578-52-0340, described in the plat recorded in Book 2022 - ____ [to be inserted at recording of the plat] of the Henderson County Registry, said PINs 9578-52-1337 and 9578-52-0340 being described by metes and bounds as follows:

Situated in the City of Hendersonville, Henderson County, North Carolina and being more particularly described as follows:

Commencing at an existing iron pin on the eastern margin of Old Spartanburg Road and being the northwest corner of Lot 1 as shown on Plat Slide 10786 as recorded in the Register of Deeds for Henderson County, North Carolina and running with the northern line of Lot 1 N58-03-07E for a distance of 191.68 feet to the Point of Beginning being the northwest corner of Lot 4 as shown on Plat Slide 10786, thence running N58-03-07E for a distance of 210.85 feet to an existing bedrail; thence running S36-45-28E for a distance of 168.69 feet to a point; thence running S36-16-28E for a distance of 47.89 feet to an existing iron pin; thence running with an unnamed private gravel road S50-41-48W for a distance of 245.62 feet to and existing iron pin; thence running N28-28-41W for a distance of 247.75 feet with the boundary of the City of Hendersonville to an existing iron pin being the Point of Beginning. Said property contains 1.21 Acres more or Less

Re: Petition for Contiguous Annexation

Petitioners: Appalachian Dew, LLC (Samuel R. Henderson, Vice President)


File No. C22-21-ANX

Section 3. Notice of the public hearing shall be published once in The Hendersonville Times-News, a newspaper having general circulation in the City of Hendersonville, at least 10 days prior to the date of the public hearing.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 7th day of April 2022.

Attest:


Angela L. Reece, City Clerk


Barbara G. Volk, Mayor, City of Hendersonville



StarNews | The Dispatch | Times-News
Sun Journal | The Daily News | The Star
The Free Press | Gaston Gazette

Order Confirmation

Not an Invoice

Section 7, Item A.

Account Number:	488558
Customer Name:	City Of Hendersonville
Customer Address:	City Of Hendersonville 160 6Th AVE E City Clerk Hendersonville NC 28792-3775
Contact Name:	Angela Reece
Contact Phone:	828-697-3005
Contact Email:	areece@hvlnc.gov
PO Number:	R-22-47

Date:	04/08/2022
Order Number:	7158358
Prepayment Amount:	\$ 0.00

Column Count:	1.0000
Line Count:	105.0000
Height in Inches:	0.0000

Print

Product	#Insertions	Start - End	Category
HEN Times-News	1	04/24/2022 - 04/24/2022	Govt Public Notices
HEN blueridgenow.com	1	04/24/2022 - 04/24/2022	Govt Public Notices

Total Order Confirmation

\$17.60

Resolution #R-22-47
RESOLUTION BY THE CITY
OF HENDERSONVILLE
CITY COUNCIL FIXING
DATE OF PUBLIC HEARING
ON QUESTION OF
ANNEXATION PURSUANT
TO G.S. 160A-58.2

WHEREAS, a petition request-
ing annexation of the contiguous
area described herein has
been received; and

WHEREAS, certification by
the City Clerk as to the suffi-
ciency of the petition has been
made;

NOW, THEREFORE BE IT
RESOLVED, by the City Coun-
cil of the City of Henderson-
ville, North Carolina that:

Section 1. A public hearing on
the question of annexation of
the contiguous area described
herein will be held at City
Operations Center located at
305 William St. Hendersonville
NC, 28792 at 5:45 p.m. May 3th,
2022, or as soon thereafter as it
may be heard.

Section 2. The area proposed
for annexation is described as
follows:

BEING all of that real prop-
erty consisting of PINs 9578-52-
1337 and 9578-52-0340, described
in the plat recorded in Book
2022 - _____ (to be inserted at
recording of the plat) of the
Henderson County Registry,
said PINs 9578-52-1337 and 9578-
52-0340 being described by
metes and bounds as follows:

Situated in the City of Hender-
sonville, Henderson County,
North Carolina and being more
particularly described as
follows:

Commencing at an existing
iron pin on the eastern margin
of Old Spartanburg Road and
being the northwest corner of
Lot 1 as shown on Plat Slide
10786 as recorded in the Regis-
ter of Deeds for Henderson
County, North Carolina and
running with the northern line
of Lot 1 N58-03-07E for a
distance of 191.68 feet to the
Point of Beginning being the
northwest corner of Lot 4 as
shown on Plat Slide 10786,
thence running N58-03-07E for
a distance of 210.85 feet to an
existing bedrail; thence
running S36-45-28E for a
distance of 168.69 feet to a
point; thence running S36-16-
28E for a distance of 47.89 feet
to an existing iron pin; thence
running with an unnamed
private gravel road S50-41-48W
for a distance of 245.62 feet to
and existing iron pin; thence
running N28-28-41W for a
distance of 247.75 feet with the
boundary of the City of
Hendersonville to an existing
iron pin being the Point of
Beginning. Said property
contains 1.21 Acres more or
Less

Re: Petition for Contiguous
Annexation

Petitioners: Appalachian Dew,
LLC (Samuel R. Henderson,
Vice President)

File No. C22-21-ANX

Section 3. Notice of the public
hearing shall be published once
in The Hendersonville Times-
News, a newspaper having
general circulation in the City
of Hendersonville, at least 10
days prior to the date of the
public hearing.

Adopted by the City Council of
the City of Hendersonville,
North Carolina on this 7th day
of April 2022.

Barbara G. Valk, Mayor, City
of Hendersonville

Attest:
Angela L. Reece, City Clerk
#7158358 4/24/2022

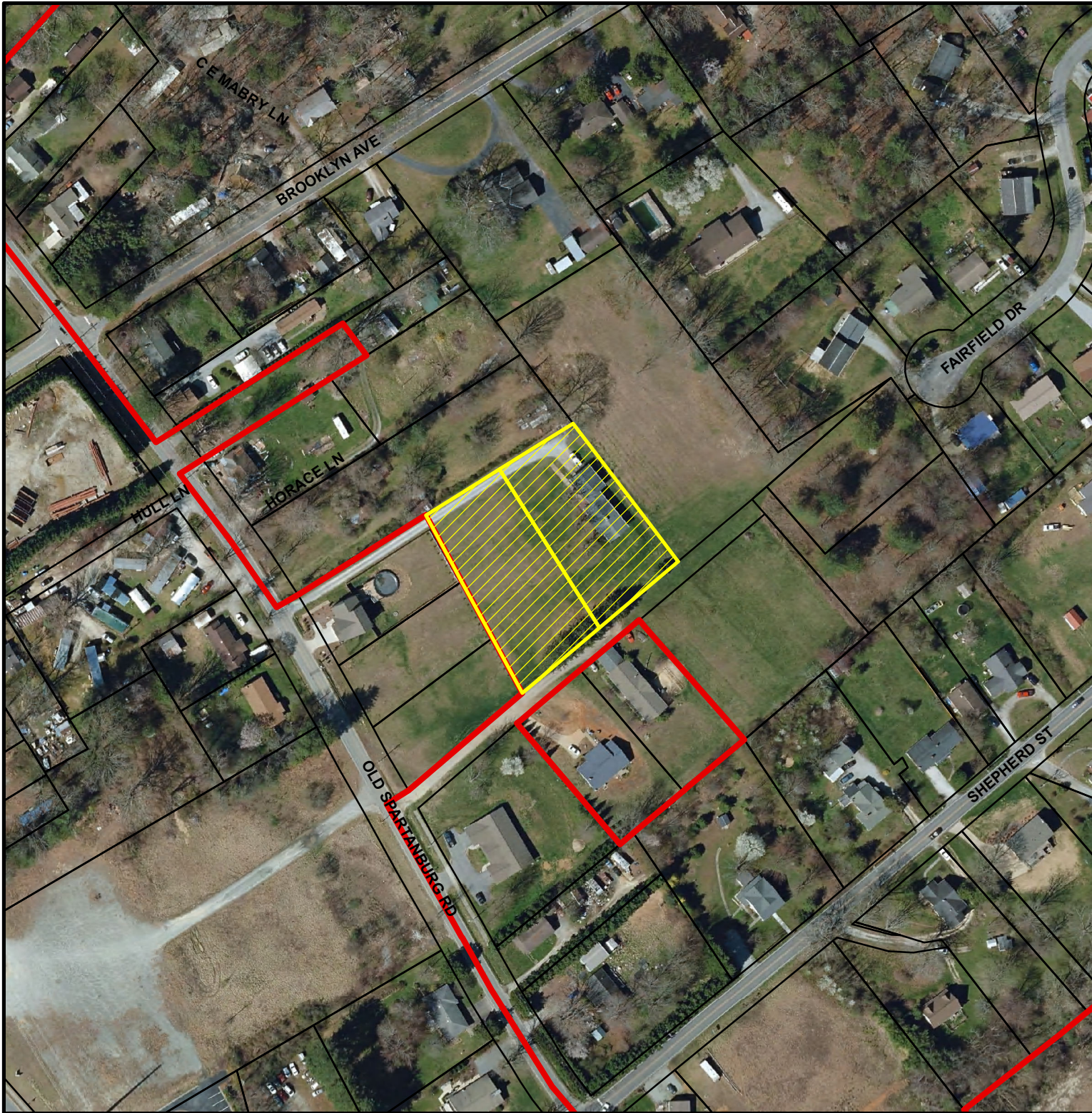
Tax Parcels: 9578-52-1337, 9578-52-0340

Owner: FOR APPALACHIAN DEW, LLC, a North Carolina Limited Liability Company

Situated in the City of Hendersonville, Henderson County, North Carolina and being more particularly described as follows:

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Said property contains 1.21 Acres more or Less



1448 & 1450 Old Spartanburg Road
P22-21-ANX
PINs: 9578521337, 9578520340
Acreage: 1.21
Contiguous Annexation Map
Community Development Department

-  Subject Property
-  Hendersonville City Limits



BK 3868 PG 411 - 412 (2) DOC# 973562
 This Document eRecorded: 02/14/2022 01:24:42 PM
 Fee: \$26.00
 Henderson County, North Carolina Tax: \$640.00
 William Lee King, Register of Deeds

NORTH CAROLINA GENERAL WARRANTY DEED

Excise Tax: \$ 640.00

Parcel Identifier No. 10001655; 10001654 Verified by _____ County on the ____ day of _____, 20____
 By: _____

Mail/Box to: Whitney Staton, Staton Law Firm, 112 North Washington Street, Hendersonville, NC 28739

This instrument was prepared by: Staton Law Firm, 112 North Washington Street, Hendersonville, NC 28739

Brief description for the Index: 1448 Old Spartanburg Rd

THIS DEED made this 14th day of February, 2022, by and between

GRANTOR
 Stephen Parker, an unmarried man
 987 Oak Grove Church Rd
 Ellenboro, NC 28040

GRANTEE
 Appalachian Dew, LLC, a North Carolina
 Limited Liability Company
 500 Westover DR #10186
 Sanford, NC 27330

Enter in appropriate block for each Grantor and Grantee: name, mailing address, and, if appropriate, character of entity, e.g. corporation or partnership.

The designation Grantor and Grantee 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.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot, parcel of land or condominium unit situated in the City of _____, Hendersonville Township, Henderson County, North Carolina and more particularly described as follows:

BEING ALL of lot 4 and lot 5 of the Minor Subdivision Plat of Three Oaks as shown on that Plat of Survey recorded at Plat Slide 10786, Henderson County Registry, reference to which is hereby made for a greater certainty of description.

SUBJECT TO that certain Deed of Easement for Access recorded on February 14, 2022 in Deed Book 3868, Page 407, Henderson County, North Carolina.

AND BEING a portion of the property as described in recorded Deed Book 3183, Page 1, Henderson County Registry.

REID: 10001655; 10001654

Page 1 of 2

NC Bar Association Form No. 3 © 1976, Revised © 1977, 2002, 2013
 Printed by Agreement with the NC Bar Association - 1981

This standard form has been approved by:
 North Carolina Bar Association - NC Bar Form No. 3

submitted electronically by "Staton Law 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.

The property hereinabove described was acquired by Grantor by instrument recorded in Book 3183 page 1.
All or a portion of the property herein conveyed includes or X does not include the primary residence of a Grantor.

A map showing the above described property is recorded in Plat Book 10786 page .

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

And the Grantor covenants with the 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, other than the following exceptions:

Subject to 2022 ad valorem property taxes.

Subject to easements, rights of way and restrictions of record.

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

By: _____ (Entity Name) _____ Print/Type Name: Stephen Parker (SEAL)

By: _____ (SEAL)

Print/Type Name & Title: _____ Print/Type Name: _____

By: _____ (SEAL)

Print/Type Name & Title: _____ Print/Type Name: _____

By: _____ (SEAL)

Print/Type Name & Title: _____ Print/Type Name: _____

State of North Carolina - County or City of Henderson

I, the undersigned Notary Public of the County or City of Henderson and State aforesaid, certify that Stephen Parker personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this 14th day of February, 2022.

My Commission Expires: 9/7/2025
(Affix Seal)

HANNAH MCCONNELL
Notary Public, North Carolina
Henderson County
My Commission Expires
September 07, 2025

Hannah McConnell
Hannah McConnell Notary Public
Notary's Printed or Typed Name

State of _____ - County or City of _____

I, the undersigned Notary Public of the County or City of _____ and State aforesaid, certify that _____ personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this _____ day of _____, 20____.

My Commission Expires: _____
(Affix Seal)

Notary Public
Notary's Printed or Typed Name

State of _____ - County or City of _____

I, the undersigned Notary Public of the County or City of _____ and State aforesaid, certify that _____ personally came before me this day and acknowledged that _____ he is the _____ of _____, a North Carolina or _____ corporation/limited liability company/general partnership/limited partnership (strike through the inapplicable), and that by authority duly given and as the act of such entity, _____ he signed the foregoing instrument in its name on its behalf as its act and deed. Witness my hand and Notarial stamp or seal, this _____ day of _____, 20____.

My Commission Expires: _____
(Affix Seal)

Notary Public
Notary's Printed or Typed Name



CITY OF HENDERSONVILLE
COMMUNITY DEVELOPMENT DEPARTMENT

100 N. King St. ~ Hendersonville, NC ~ 28792
Phone (828) 697-3010 ~ Fax (828) 697-6185
www.hendersonvillenc.gov

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

Date	3-2-2022	Location / Property Address	1448 1/2 1450 Old Spartanburg Rd. Hendersonville, NC 28792
List 10 digit PIN or 7 digit PID number	9578521337 3 9578520340		

Does this property adjoin the present City Limits? ☒ YES ☐ NO

Is the property within the ETJ? ☒ YES ☐ NO

Reason for annexation	Connecting to Hendersonville Sewer
-----------------------	------------------------------------

Applicant Name	Samuel R. Henderson, Vice President
----------------	-------------------------------------

Address	500 Westover Dr. #10186, Sanford, NC 27330
---------	--

Phone	305-988-0781	Fax	N/A	Email	B.r.corporations@gmail.com
-------	--------------	-----	-----	-------	----------------------------

Property Owner: Name	Appalachian Dew, LLC
----------------------	----------------------

Address	500 Westover Dr #10186, Sanford, NC 27330
---------	---

Signature _____

Printed Name Samuel R. Henderson

Official Use:

DATE RECEIVED: _____ BY _____



NORTH CAROLINA

Department of the Secretary of State

Section 7, Item A.

To all whom these presents shall come, Greetings:

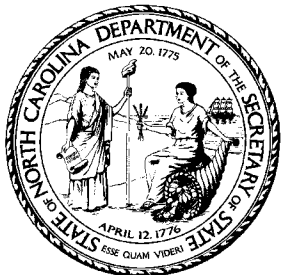
I, ELAINE F. MARSHALL, Secretary of State of the State of North Carolina, do hereby certify the following and hereto attached to be a true copy of

ARTICLES OF ORGANIZATION

OF

APPALACHIAN DEW, LLC

the original of which was filed in this office on the 13th day of December, 2021.



Scan to verify online.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Raleigh, this 13th day of December, 2021.

Elaine F. Marshall

Secretary of State

State of North Carolina
Department of the Secretary of State

SOSID: 2320190
Date Filed: 12/13/2023
Elaine F. N
Section 7, Item A.
North Carolina Secretary of State
C2021 347 00089

Limited Liability Company
ARTICLES OF ORGANIZATION

Pursuant to §57D-2-20 of the General Statutes of North Carolina, the undersigned does hereby submit these Articles of Organization for the purpose of forming a limited liability company.

1. The name of the limited liability company is: Appalachian Dew, LLC
(See Item 1 of the Instructions for appropriate entity designation)
2. The name and address of each person executing these articles of organization is as follows: (State whether each person is executing these articles of organization in the capacity of a member, organizer or both by checking all applicable boxes.) **Note: This document must be signed by all persons listed.**

Name	Business Address	Capacity
<u>Samuel R. Henderson</u>	<u>- 500 Westover DR #10186 Sanford NC, 27330-8941 United States</u>	<input checked="" type="checkbox"/> Member <input type="checkbox"/> Organizer
_____	_____	<input type="checkbox"/> Member <input type="checkbox"/> Organizer
_____	_____	<input type="checkbox"/> Member <input type="checkbox"/> Organizer

3. The name of the initial registered agent is: Samuel R. Henderson

4. The street address and county of the initial registered agent office of the limited liability company is:

Number and Street 500 Westover DR #10186

City Sanford State: NC Zip Code: 27330-8941 County: Lee

5. The mailing address, if different from the street address, of the initial registered agent office is:

Number and Street _____

City _____ State: NC Zip Code: _____ County: _____

6. Principal office information: (Select either a or b.)

a. ☐ The limited liability company has a principal office.

The principal office telephone number: _____

The street address and county of the principal office of the limited liability company is:

Number and Street: _____

City: _____ State: _____ Zip Code: _____ County: _____

The mailing address, if different from the street address, of the principal office of the company is:

Number and Street: _____

City: _____ State: _____ Zip Code: _____ County: _____

b. ☒ The limited liability company does not have a principal office.

7. Any other provisions which the limited liability company elects to include (e.g., the purpose of the entity) are attached.
8. **(Optional):** Listing of Company Officials (See instructions on the importance of listing the company officials in the creation document.

Name	Title	Business Address
Samuel R. Henderson	Member	500 WESTOVER DR #10186 SANFORD

9. **(Optional):** Please provide a business e-mail address: Privacy Redaction
 The Secretary of State's Office will e-mail the business automatically at the address provided above at no cost when a document is filed. The e-mail provided will not be viewable on the website. For more information on why this service is offered, please see the instructions for this document.
10. These articles will be effective upon filing, unless a future date is specified:

This is the 13th day of December, 2021.

 Samuel R. Henderson

Signature

 Samuel R. Henderson Member/Organizer

Type or Print Name and Title

The below space to be used if more than one organizer or member is listed in Item #2 above.

 Signature

 Signature

 Type or Print Name and Title

 Type or Print Name and Title

NOTE:

1. Filing fee is \$125. This document must be filed with the Secretary of State.

1/6/2022

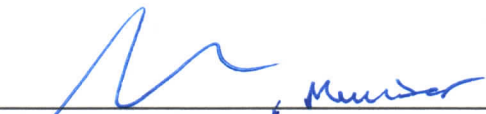
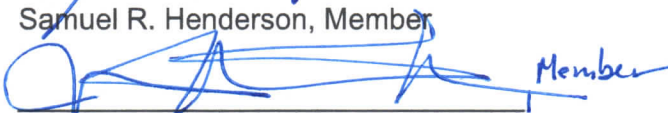
SPECIAL MEETING TO ELECT OFFICERS

Appalachian Dew, LLC
500 Westover DR #10186
Sanford, NC 27330
s.r.corporations@gmail.com

A Special Meeting was held by the Members of Appalachian Dew, LLC, a Partnership registered in the State of North Carolina, to elect the Officers of the Partnership. The election results are as follows;

- President - Jessica Woodhouse Henderson
- Vice President- Samuel R. Henderson
- Treasurer - Jessica Woodhouse Henderson
- Secretary - Samuel R. Henderson

The Meeting was then closed.

 _____ Samuel R. Henderson, Member	<u>1-6-2022</u> Date
 _____ Jessica Woodhouse Henderson, Member	<u>1/6/2022</u> Date



CITY OF HENDERSONVILLE

AGENDA ITEM SUMMARY

PLANNING DIVISION

SUBMITTER: Lew Holloway **MEETING DATE:** April 11, 2022

AGENDA SECTION: Public Hearing **DEPARTMENT:** Community Development

TITLE OF ITEM: Zoning Text Amendment: Conditional Zoning District Rezoning Required Triggers (P22-25-ZTA) – *Lew Holloway; Community Development Director*

SUGGESTED MOTION(S):

<p><u>For Recommending Approval:</u></p> <p>I move City Council <u>adopt</u> an ordinance amending the official City of Hendersonville Zoning Ordinance, Article IV – Section 4-5 and Article V – Sections 5-1-4; 5-2-4; 5-3-4; 5-4-4; 5-5-4; 5-6-5; 5-7-4; 5-8-4; 5-9-1; 5-9-5; 5-10-4; 5-12-4; 5-13-5; 5-19-4; 5-22-5; 5-23-6 & 5-27-5 based on the following:</p> <p>1. The petition is found to be <u>consistent</u> with the City of Hendersonville 2030 Comprehensive Plan based on the information from the staff analysis and the public hearing, and because:</p> <p>The 2030 Comprehensive Plan Land Use and Development Chapter calls for the City to consider short- and long-term impacts on compatibility with existing development and further recommends the adjustment of review procedures to accomplish this goal as needed.</p> <p>2. We <u>[find]</u> this petition to be reasonable and in the public interest based on the information from the staff analysis and the public hearing, and because:</p> <ol style="list-style-type: none">1. The petition addresses an incongruency in our existing zoning ordinance regarding the standard review process required of projects of a particular size.2. The text amendment will permit the community to address potential short-term incompatibilities caused by new development, particularly infill development. <p>[DISCUSS & VOTE]</p>	<p><u>For Recommending Denial:</u></p> <p>I move City Council <u>deny</u> an ordinance amending the official City of Hendersonville Zoning Ordinance, Article IV – Section 4-5 and Article V – Sections 5-1-4; 5-2-4; 5-3-4; 5-4-4; 5-5-4; 5-6-5; 5-7-4; 5-8-4; 5-9-5; 5-10-4; 5-12-4; 5-13-5; 5-19-4; 5-22-5; 5-23-6 & 5-27-5 based on the following:</p> <p>1. The petition is found to be <u>consistent</u> with the City of Hendersonville 2030 Comprehensive Plan based on the information from the staff analysis and the public hearing, and because:</p> <p>The 2030 Comprehensive Plan Land Use and Development Chapter calls for the City to consider short- and long-term impacts on compatibility with existing development and further recommends the adjustment of review procedures to accomplish this goal as needed.</p> <p>2. We <u>[do not find]</u> this petition to be reasonable and in the public interest based on the information from the staff analysis and the public hearing, and because:</p> <ol style="list-style-type: none">1. The text amendment includes additional regulatory thresholds which will negatively impact the ability of the market to address on-going housing needs.2. The text amendment is not targeted to individual zoning districts, making changes that are too broadly impactful. <p>[DISCUSS & VOTE]</p>
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SUMMARY: *The City initiated a zoning text amendment to address the thresholds for development which will trigger a Conditional Zoning District. Following a recent development project within the City of Hendersonville’s Greenville Highway Mixed Use District (GHMU), staff were directed to investigate a zoning text amendment that would require Conditional Rezoning for development or redevelopment of 50,000 square feet or greater that would apply to all zoning districts classifications.*

It appears this could best be accomplished with an amendment to Article 4: Sec. 4-5 to establish a development and redevelopment threshold, alongside individual clarifying amendments to the “mirror Conditional Zoning Districts” within Article V: Zoning District Classifications.

The requirement to rezone once a project reaches a certain threshold is applicable, in practice, only to R-40, R-20, R-15, R-10, R-6, C-1, C-2, C-3, C-4, MIC, I-1, RCT, CMU, GHMU, HMU, CHMU, each has a mirror “CZD” district.

An overview of the impacts of the proposed amendment to each of these districts is provided in the staff report.

PROJECT/PETITIONER NUMBER:	P22-25-ZTA
PETITIONER NAME:	<ul style="list-style-type: none">City of Hendersonville
ATTACHMENTS:	<ol style="list-style-type: none">Staff ReportZoning Text Revisions

Ordinance # O-22-22

AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND ARTICLE 4 - ESTABLISHMENT OF DISTRICTS: SECTION 4-5; ARTICLE 5 – ZONING DISTRICT CLASSIFICATIONS: SECTIONS 5-1-4, 5-2-4; 5-3-4; 5-4-4; 5-5-4; 5-6-5; 5-7-4; 5-8-4; 5-9-1; 5-9-5; 5-10-4; 5-12-4; 5-13-5; 5-19-4; 5-22-5; 5-23-6 AND 5-27-5 OF THE CITY OF HENDERSONVILLE ZONING ORDINANCE TO ESTABLISH A CONDITIONAL ZONING REQUIREMENT FOR DEVELOPMENT AND REDEVELOPMENT OF 50,000 SQUARE FEET AND/OR 51 DWELLING UNITS OR MORE

WHEREAS, the City of Hendersonville’s Planning Board reviewed this City initiated zoning text amendment establishing a conditional zoning requirement for development and redevelopment of 50,000 square feet and/or 51 dwelling units or more at its regular meeting on April 11th, 2022; voting 8-0 to recommend City Council adopt an ordinance amending the City of Hendersonville Zoning Ordinance, and

WHEREAS, City Council desires to provide for the consistent application of conditional zoning requirements across the Zoning District Classifications, and

WHEREAS, City Council took up this application at its regular meeting on May 5th, 2022, and

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Hendersonville, North Carolina that Article 4 – Establishment of Districts: Section 4-5; Article 5 – Zoning District Classifications: Sections 5-1-4, 5-2-4; 5-3-4; 5-4-4; 5-5-4; 5-6-5; 5-7-4; 5-8-4; 5-9-1; 5-9-5; 5-10-4; 5-12-4; 5-13-5; 5-19-4; 5-22-5; 5-23-6 and 5-27-5 be amended as follows to establish a Conditional Zoning Requirement for Development and Redevelopment of 50,000 square feet and/or 51 dwelling units or more:

ARTICLE IV ESTABLISHMENT OF DISTRICT CLASSIFICATIONS

Sec. 4-5. Classification of uses.

The range of uses allowed in each district established in this ordinance is summarized in Table 4-5 Table of Permitted Uses, which is a part of this section. In the event of a conflict between Table 4-5 and the text of this appendix, the text shall control.

The Table of Uses orders uses into the following four classifications. All uses must comply with regulations of general application in the zoning ordinance, including, without limitation, those in articles VI, VII, and XV. In addition, uses must comply with specific development standards as noted below:

- a) **Permitted by right (P).** A use which is permitted by right must comply with the development standards for the relevant zoning district. This process requires administrative (i.e. professional city staff) review leading to an administrative decision.
- b) **Permitted by right subject to supplementary standards (SS).** Same as above except that the use must comply with one or more additional standards not required of other permitted uses in the district. These additional standards are either incorporated into the description of the use or, when they are too lengthy, a reference is given to their location in the ordinance. This process requires administrative (i.e. professional city staff) review leading to an administrative decision.
- c) **Special Use (SU).** A use which may be authorized only by means of a special use permit (SUP) issued by the board of adjustment pursuant to article X, below. This process requires initial administrative review (i.e. professional city staff) and a final quasi-judicial decision by the board of adjustment (quasi-judicial process).

- d) **Limited (L).**
- e) **Uses permitted only pursuant to a rezoning to a conditional zoning district.**
 - 1) Any building or structure that exceeds the maximum square footage as stated in a conventional zoning district shall require a rezoning to a conditional zoning district which allows the proposed square footage for the building or structure in order to be permitted.
 - 2) Any ~~building of the following development or structure that is more than 50,000 square feet of gross floor area~~ redevelopment shall be required a rezoning to a conditional zoning district which allows the ~~proposed gross square footage for the building it:~~
 - (a) Any nonresidential development or redevelopment that includes a cumulative total gross floor area for all buildings combined for all phases combined of the development or redevelopment of 50,000 square feet or more;
 - (b) Any mixed-use development or redevelopment that includes a cumulative total gross floor area for all buildings combined (including both residential and nonresidential) for all phases combined of the development or redevelopment of 50,000 square feet or more;
 - (c) Any amendment to an approved nonresidential or mixed-use development or redevelopment that, when added to the approved development or redevelopment for all phases of the development or redevelopment combined, brings the development or redevelopment (including the amendment) within the parameters of (a) or (b) above.
 - (d) Any single, two or multi-family residential development or redevelopment that includes 51 or more residential dwelling units for all phases combined; or
 - (e) Any amendment to an approved single, two or multi-family residential development or redevelopment that, when added to the approved number of dwelling units for all phases combined, brings the total number of dwelling units (including the amendment) for all phases of the development or redevelopment combined to 51 or more dwelling units.
 - 3) The provisions in this Section 4-5(e) ~~The 50,000 square foot gross floor area threshold~~ for requiring a rezoning to a conditional zoning district ~~is~~ are subject to any exemptions established in article V, zoning district classifications.

ARTICLE V ZONING DISTRICT CLASSIFICATIONS

5-1-4. R-40 CZD Estate Residential Conditional Zoning District Classification.

The purpose, ~~and~~ requirements and standards of this zoning district classification are identical to the R-40 Estate Residential Zoning District Classification except that rezoning to R-40 Conditional Zoning District as provided for in article VII herein, is required as a prerequisite to any use or development. The following uses shall be permitted in the R-40 Estate Residential Conditional Zoning District Classification ~~only~~ only upon rezoning to R-40CZD, regardless of the square footage or number of residential units for the use:

Adaptive reuses

Telecommunications towers

Permitted uses for the R-40, Estate Residential Zoning District Classification as specified in subsection 5-1-1, above.

Special uses for the R-40, Estate Residential Zoning District Classification as specified in subsection 5-1-2, above.

5-2-4. R-20CZD Low-Density Residential Conditional Zoning District Classification.

The purpose, ~~and~~ requirements and standards of this zoning district classification are identical to the R-20 Low-Density Residential Zoning District Classification except that rezoning to R-20 Conditional Zoning

District as provided for in article VII herein, is required as a prerequisite to any use or development. The following uses shall be permitted in the R-20 Low-Density Residential Conditional Zoning District Classification only upon rezoning to R-20CZD, regardless of the square footage or number of residential units for the use:

Adaptive reuses

Telecommunications towers

Permitted uses for the R-20, Low-Density Residential Zoning District Classification as specified in subsection 5-2-1, above.

Special Uses for the R-20, Low Density Residential Zoning District Classification as specified in subsection 5-2-2 above.

5-3-4. R-15CZD Medium-Density Residential Conditional Zoning District Classification.

The purpose, ~~and~~ requirements and standards of this zoning district classification are identical to the R-15 Medium-Density Residential Zoning District Classification except that rezoning to R-15 Conditional Zoning District as provided for in article VII herein, is required as a prerequisite to any use or development. The following uses shall be permitted in the R-15 Medium-Density Residential Conditional Zoning District Classification only upon rezoning to R-15CZD, regardless of the square footage or number of residential units for the use:

Adaptive reuses

Telecommunications towers

Permitted uses for the R-15 Medium-Density Residential Zoning District Classification as specified in subsection 5-3-1, above.

Special Uses for the R-15 Medium-Density Residential Zoning District Classification as specified in subsection 5-3-2, above.

5-4-4. R-10 CZD Medium-Density Residential Conditional Zoning District Classification.

The purpose, ~~and~~ requirements and standards of this zoning district classification are identical to the R-10 Medium-Density Residential Zoning District Classification except that rezoning to R-10 Conditional Zoning District as provided for in article VII herein, is required as a prerequisite to any use or development. The following uses shall be permitted in the R-10 Medium-Density Residential Conditional Zoning District Classification only upon rezoning to R-10CZD, regardless of the square footage or number of residential units for the use:

Adaptive reuses

Telecommunications towers

Permitted uses for the R-10 Medium-Density Residential Zoning District Classification as specified in subsection 5-4-1, above.

Special uses for the R-10 Medium-Density Residential Zoning District Classification as specified in subsection 5-4-2, above.

5-5-4. R-6 CZD High-Density Residential Conditional Zoning District Classification.

The purpose, ~~and~~ requirements and standards of this zoning district classification are identical to the R-6 High-Density Residential Zoning District Classification except that rezoning to R-6 Conditional Zoning District as provided for in article VII herein, is required as a prerequisite to any use or development. The following uses

shall be permitted in the R-6 High-Density Residential Conditional Zoning District Classification ~~only upon rezoning to R-6CZD, regardless of the square footage or number of residential units for the use:~~

Adaptive reuses

Telecommunications towers

Permitted uses for the R-6 High-Density Residential Zoning District Classification as specified in subsection 5-5-1, above.

Special Uses for the R-6 High-Density Residential Zoning District Classification as specified in subsection 5-5-2, above.

5-6-5. C-1 CZD Central Business Conditional Zoning District Classification.

The purpose, ~~and~~ requirements and standards of this zoning district classification are identical to the C-1 Central Business Zoning District Classification except that rezoning to C-1 Conditional Zoning District as provided for in article VII herein, is required as a prerequisite to any use or development. The following uses shall be permitted in the C-1 Central Business Conditional Zoning District Classification ~~only upon rezoning to C-1CZD, regardless of the square footage or number of residential units for the use:~~

~~a) Any development or redevelopment involving more than 50,000 square feet of gross floor area.~~

b) Shelter facilities, subject to supplementary standards contained in section 16-4, below.

c) Permitted uses for the C-1 Central Business Zoning District Classification as specified in subsection 5-6-1, above.

d) Special uses for the C-1 Central Business Zoning District Classification as specified in subsection 5-6-2, above.

5-7-4. C-2 CZD Secondary Business Conditional Zoning District Classification.

The purpose, ~~and~~ requirements and standards of this zoning district classification are identical to the C-2 Secondary Business Zoning District Classification except that rezoning to C-2 Conditional Zoning District as provided for in article VII herein, is required as a prerequisite to any use or development. The following uses shall be permitted in the C-2 Secondary Business Conditional Zoning District Classification ~~only upon rezoning to C-2CZD, regardless of the square footage or number of residential units for the use:~~

Day center.

Shelter facilities.

Telecommunications towers.

~~Development or redevelopment involving more than 50,000 square feet of floor area.~~

Permitted uses for the C-2 Secondary Business Zoning District Classification as specified in subsection 5-7-1, above.

Special uses for the C-2 Secondary Business Zoning District Classification as specified in subsection 5-7-2, above.

5-8-4. C-3CZD Highway Business Conditional Zoning District Classification.

The purpose, ~~and~~ requirements and standards of this zoning district classification are identical to the C-3 Highway Business Zoning District Classification except that rezoning to C-3 Conditional Zoning District as provided for in Article VII herein, is required as a prerequisite to any use or development. The following uses shall be permitted in the C-3 Highway Business Conditional Zoning District Classification ~~only upon rezoning to C-3CZD, regardless of the square footage or number of residential units for the use:~~

Day centers

Shelter facilities

~~Development or redevelopment involving more than 50,000 square feet of floor area~~

Permitted uses for the C-3, Highway Business Zoning District Classification as specified in subsection 5-8-1, below)

Special uses for the C-3, Highway Business Zoning District Classification as specified in subsection 5-8-2, below

Sec. 5-9. C-4 Neighborhood Commercial Zoning District Classification.

The purpose of this zoning district classification is to provide for the most frequent daily needs of residents of an immediate neighborhood. Because these shops and stores will be most closely associated with residential uses, more restrictive requirements for light, air, open space, etc., are necessary.

5-9-1. Permitted uses.

The following uses are permitted by right in the C-4 Neighborhood Commercial Zoning District Classification, provided they meet all requirements of this Section and all other requirements established in this appendix:

Accessory dwelling units

Accessory uses and structures

Dry cleaning and laundry establishment containing less than 2,000 square feet of floor area

Garage apartments

Home occupations

Parks

Residential dwellings, single-family

Signs, subject to the provisions of article XIII

Telecommunications antennas, subject to supplementary standards contained in section 16-4, below

The following uses are permitted by right in the C-4 Neighborhood Commercial Zoning District Classification, provided they meet all requirements of this Section and all other requirements established in this appendix and have no more than 10,000 gross square feet of floor area, including all proposed phases of development or redevelopment. Expansions of any of the following uses which, when added to the gross floor area of the existing use, bring the total gross square footage of floor area, for all existing and planned phases to more than 10,000 square feet are prohibited.

Adult care centers registered with the NC Department of Health and Human Services (DHSS)

Automobile car washes so long as no attendants are employed on the premises

Banks and other financial institutions

Business services

Convenience stores with or without gasoline sales

Dance and fitness facilities

~~Dry cleaning and laundry establishment containing less than 2,000 square feet of floor area~~

~~Garage apartments~~

~~Home occupations~~

Laundries, coin-operated

Music and art studios

Offices, business, professional and public

~~Parks~~

Personal services

Religious institutions

~~Residential dwellings, single family~~

Retail stores customarily serving neighborhoods and designed to serve a neighborhood

Service stations

~~Signs, subject to the provisions of article XIII~~

~~Telecommunications antennas, subject to supplementary standards contained in section 16-4, below~~

5-9-5. C-4CZD Neighborhood Commercial Conditional Zoning District Classification.

The purpose, ~~and~~ requirements and standards of this district are identical to the C-4 Neighborhood Commercial Zoning District Classification except that a rezoning to C-4 Conditional Zoning District, as provided for in article VII herein, is required as a prerequisite to any use or development. The following uses shall be permitted in the C-4 Neighborhood Commercial Conditional Zoning District Classification ~~only~~ upon rezoning to C-4CZD, regardless of the square footage or number of residential units for the use:

Permitted uses for the C-4 Neighborhood Commercial Zoning District classification as specified in subsection 5-9-1, above.

Special uses for the C-4 Neighborhood Commercial Zoning District classification as specified in subsection 5-9-2, above.

~~Development or redevelopment involving more than 10,000 square feet of floor area.~~

5-10-4. MICCZD Medical, Institutional, Cultural Conditional Zoning District Classification.

The purpose, ~~and~~ requirements and standards of this zoning district classification are identical to the MIC Medical, Institutional and Cultural Zoning District Classification except that rezoning to MIC Conditional Zoning District as provided for in article VII herein, is required as a prerequisite to any use or development. The following uses shall be permitted in the MIC Medical, Institutional and Cultural Zoning District Classification ~~only~~ upon rezoning to MICCZD, regardless of the square footage or number of residential units for the use:

Telecommunications towers, subject to supplementary standards contained in section 16-4 below

~~Any development or redevelopment involving more than 50,000 square feet of gross floor area.~~

Permitted uses for the MIC, Medical, Institutional, Cultural Zoning District Classification as specified in subsection 5-10-1, above

Special Uses for the MIC, Medical, Institutional, Cultural Zoning District Classification as specified in subsection 5-10-2, above

5-12-4. I-1CZD Industrial Conditional Zoning District Classification.

The purpose, ~~and~~ requirements and standards of this zoning district classification are identical to the I-1 Industrial Zoning District Classification except that rezoning to I-1 Conditional Zoning District as provided for in article VII herein, is required as a prerequisite to any use or development. The following uses shall be permitted in the I-1 Industrial Conditional Zoning District Classification ~~only~~ upon rezoning to I-1CZD, regardless of the square footage or number of residential units for the use:

Day centers

Shelter facilities

Permitted uses for the I-1 Industrial Zoning District Classification as specified in subsection 5-12-1, above

Special uses for the I-1 Industrial Zoning District Classification as specified in subsection 5-12-2, above

~~Development or redevelopment involving more than 50,000 square feet of floor area unless exempted in section 5-12-1(b), above~~

5-13-5. RCTCZD Residential Commercial Transition Conditional Zoning District Classification.

The purpose, ~~and~~ requirements and standards of this classification are identical to the RCT Residential Commercial Transition Zoning District Classification except that rezoning to RCT Conditional Zoning District as provided for in article VII herein, is required as a prerequisite to any use or development. The following uses shall be permitted in the RCTCZD Residential Commercial Transition Conditional Zoning District Classification ~~only~~ upon rezoning to RCTCZD, regardless of the square footage or number of residential units for the use:

Permitted uses for the RCT, Residential Commercial Transition Zoning District Classification as specified in subsection 5-13-1, below)

~~Conditional~~ Special uses for the RCT, Residential, Commercial Transition Zoning District Classification as specified in subsection 5-13-2, below

5-19-4 CMUCZD Central Mixed Use Conditional Zoning District Classification.

The purpose, ~~and~~ requirements and standards of this classification are identical to the CMU Central Mixed Use Zoning Classification except that a, rezoning as provided for in article VII herein, is required as a prerequisite to any use or development. The following uses shall be permitted in the CMU Central Mixed Use Conditional Zoning District Classification ~~only~~ upon rezoning to CMUCZD, regardless of the square footage or number of residential units for the use:

~~Any development involving more than 50,000 square feet of gross floor area and/or 50 residential dwelling units.~~

Day centers, subject to the supplementary standards contained in section 16-4, below.

Shelter facilities, subject to the supplementary standards contained in section 16-4, below.

Telecommunications towers, subject to supplementary standards contained in section 16-4, below.

Permitted uses for the CMU Central Mixed Use Zoning District Classification as specified in section 5-19-1, above.

Conditional uses for the CMU Central Mixed Use Zoning District Classification as specified in section 5-19-2, above.

5-22-5 GHMUCZD Greenville Highway Mixed Use Conditional Zoning District Classification.

The purpose, ~~and~~ requirements and standards of this zoning district classification are identical to the Greenville Highway Mixed Use Zoning District Classification except that rezoning to GHMU Conditional Zoning District as provided for in article VII herein, is required as a prerequisite to any use or development. The following uses shall be permitted in the GHMU Greenville Highway Mixed Use Conditional Zoning District Classification ~~only~~ upon rezoning to GHMUCZD, regardless of the square footage or number of residential units for the use:

Telecommunications towers, subject to supplementary standards contained in section 17-4 below.

Structures with a footprint greater than the maximum allowed under section 5-22-3.2 dimensional ~~requirements, above.~~

Permitted uses for the GHMU Zoning District Classification as specified in 5-22-1, above.

Special uses for GHMU Zoning District Classification as specified in 5-22-2, above.

5-23-6 HMUCZD Highway Mixed Use Conditional Zoning District Classification.

The purpose, ~~and~~ requirements and standards of this zoning district classification are identical to the Highway Mixed Use Zoning District Classification except that rezoning to HMU Conditional Zoning District as provided for in article VII herein, is required as a prerequisite to any use or development. The following uses shall be permitted in the HMU Highway Mixed Use Conditional Zoning District Classification ~~only~~ upon

rezoning to HMUCZD, regardless of the square footage or number of residential units for the use:

Telecommunications towers, subject to supplementary standards contained in section 16-4, below.

Structures with a footprint greater than the maximum allowed under section 5-23-3.2 dimensional
~~Requirements, above.~~

Permitted uses for the GHMU Zoning District Classification as specified in 5-23-1, above.

Special uses for GHMU Zoning District Classification as specified in 5-23-2, above.

5-27-5 CHMUCZD Commercial Highway Mixed Use Conditional Zoning District Classification.

The purpose, ~~and~~ requirements and standards of this classification are identical to the CHMU Commercial Highway Mixed Use Zoning District Classification except that a rezoning to CHMU Conditional Zoning District as provided for in article VII herein, is required as a prerequisite to any use or development. The following uses shall be permitted in the CHMU Commercial Highway Mixed Use Conditional Zoning District Classification ~~only~~ upon rezoning to CHMUCZD, regardless of the square footage or number of residential units for the use:

~~Development or redevelopment exceeding 50,000 square feet of gross floor area.~~

Telecommunications towers, subject to supplementary standards contained in section 16-4, below.

Permitted uses for the CHMU Commercial Highway Mixed Use Zoning District Classification as specified in section 5-27-1, above.

Special uses for the CHMU Commercial Highway Mixed Use Zoning District Classification as specified in section 5-27-1, above.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 5th day of May, 2022.

Attest:

Barbara G. Volk, Mayor, City of Hendersonville

Angela L. Reece, City Clerk

Approved as to form:

Angela S. Beeker, City Attorney

P22-025-ZTA: CZD REZONING REQUIRED
CITY OF HENDERSONVILLE - COMMUNITY DEVELOPMENT STAFF REPORT

PETITION SUMMARY 2

AMENDMENT ANALYSIS – AMENDMENT OVERVIEW 3

AMENDMENT ANALYSIS – AMENDMENT OVERVIEW 4

AMENDMENT ANALYSIS – COMPREHENSIVE PLAN CONSISTENCY (ARTICLE 11-4) 5

DRAFT COMPREHENSIVE PLAN CONSISTENCY AND REZONING REASONABLENESS STATEMENT 6



PROJECT SUMMARY

- Project Name & Case #:
 - Conditional Zoning Rezoning Required
 - P22-025-ZTA
- Applicant & Property Owner:
 - City Initiated Text Amendment
- Articles Amended:
 - Article IV: Establishment of Districts
 - Section 4-5: Classification of Uses
 - Article V:
 - Sections: 5-1-4; 5-2-4; 5-3-4; 5-4-4; 5-5-4; 5-6-5; 5-7-4; 5-8-4; 5-9-5; 5-10-4; 5-12-4; 5-13-5; 5-19-4; 5-22-5; 5-23-6 & 5-27-5.
- Applicable Zoning District(s):
 - This would apply to all the districts, subject to exemptions established within Article V
 - If adopted, this amendment would leave the only exemption within Article V as certain uses within the Industrial (I-1) zoning district.



Summary of Amendment Petition:

Following a recent development project within the City of Hendersonville's Greenville Highway Mixed Use District (GHMU), staff were directed to investigate a zoning text amendment that would require Conditional Rezoning for development or redevelopment of 50,000 square feet or greater that would apply to all zoning districts classifications.

It appears this could best be accomplished with an amendment to Article 4: Sec. 4-5 to establish a development and redevelopment threshold, alongside individual clarifying amendments to the "mirror Conditional Zoning Districts" within Article V: Zoning District Classifications.

The requirement to rezone once a project reaches a certain threshold is applicable, in practice, only to R-40, R-20, R-15, R-10, R-6, C-1, C-2, C-3, C-4, MIC, I-1, RCT, CMU, GHMU, HMU, CHMU, each has a mirror "CZD" district.

An overview of the impacts of the proposed amendment to each of these districts is provided below in the amendment overview.

AMMENDMENT ANALYSIS – AMENDMENT OVERVIEW

The following base zoning districts have a corresponding conditional zoning district. The following is an overview which outlines what conditional zoning requirements are currently in place and how those will be impacted by the proposed Zoning Text Amendment.

50,000 Requirement Existing (Commercial & Mixed Use):

The first group are commercial & mixed-use districts with an existing conditional rezoning requirement for development over 50,000 square feet. These zoning districts would see no change to the square footage trigger for conditional rezoning. However, also included within this text amendment is a greater than 50 dwelling unit trigger, this would impact C-1, C-2, C-3, MIC, I-1 & CHMU.

It is possible that a development of 51 units without this conditional rezoning requirement would fall under the 50,000 square trigger, but it would require units to average less than 980 square feet, including any common building facilities.

C-1 Central Business Permits single, two and multifamily residential	C-2 Secondary Business Permits single, two and multifamily residential	C-3 Highway Business Permits single & two family residential	MIC Medical, Institutional, Cultural Permits single & two family residential
I-1 Industrial* Permits “Residential Dwellings”	CMU Central Mixed Use Permits single, two and multifamily residential Includes existing 50 dwelling unit cap	CHMU Commercial Highway Mixed Use Permits single, two and multifamily residential	

I-1 Industrial includes by-right uses which are exempted from the 50,000 square foot trigger for the conditional rezoning process and this exemption will remain in place under this current language. I-1 is the only district above with any exemptions for the 50,000 square foot trigger.

50,000 Requirement Non-Existent (Commercial & Mixed Use):

The second group are commercial & mixed-use districts with no existing conditional rezoning requirement or one that differs in some way from the proposed zoning text amendment.

C-4 Neighborhood Commercial	Currently requires a Conditional Rezoning for projects which exceed 10,000 sq.ft.	10,000 sq.ft. trigger would remain without additional amendments. Significantly lower threshold than any other zoning district in code.	Lower max threshold currently in place
RCT Residential Commercial Transition	Currently has a 5,000 sq.ft. maximum commercial building footprint	Max footprint would remain; 50,000 sq.ft. & 51 dwelling units would be additional thresholds.	No max threshold currently in place
HMU Highway Mixed Use	Currently has a 40,000 square foot max building footprint in place, but no trigger for total development.	Max footprint would remain; 50,000 sq.ft. & 51 dwelling units would be additional thresholds.	No max threshold currently in place
GHMU Greenville Highway Mixed Use	Currently has a 12,000 max footprint in place, but no trigger for total development.	Max footprint would remain; 50,000 sq.ft. & 51 dwelling units would be additional thresholds.	No max threshold currently in place

50,000 Requirement Non-Existent (Residential):

The third group are residential zoning districts, none of which have a max threshold in place currently. A unique component of the City’s residential zoning districts is the “Planned Residential” density and design incentive. Found within the form of our Major and Minor PRDs (Planned Residential Developments), these incentives typically drive residential development towards one or the other. Minor PRD is an administrative process and applies to development 50 or fewer dwelling units, whereas a Major PRD is a conditional rezoning triggered by more than 50 dwelling units.

Minor PRD’s may be located in any of the following zoning districts: R-40, R-20, R-15, R-10, R-6, MIC (doesn’t permit multi-family), RCT, C-2, C-3 (doesn’t permit multi-family) & I-1 (which uses different language than all our other districts in terms of residential). Additional density bonuses are permitted under a Major PRD which requires a conditional rezoning.

District	Minor PRD Density	By-Right District Density
R-40	1.0 Unit/Acre	1.1 Units/Acre
R-20	2.5 Units/Acre	2.2 Units/Acre
R-15	3.75 Units/Acre	2.9 Units/Acre
R-10	5.5 Units/Acre	4.3 Units/Acre
R-6	8.5 Units/Acre	7.3 Units/Acre
MIC*	5.5 Units/Acre	7.3 Units/Acre
RCT	5.5 Units/Acre	5.4 Units/Acre
C-2**	8.5 Units/Acre	10.4 Units/Acre (Multi-Family); 7.26 (Single Family); 8.7 (Two Family)
C-3	8.5 Units/Acre	7.26 (Single Family); 8.7 (Two Family)...doesn't permit multi-family
I-1	8.5 Units/Acre	1.1 Units/Acre

*MIC appears to have some incongruencies because of the removal of multi-family as a by-right use in the past.
**C-2 also has some incongruencies, without further research we can't say how these came about.

There are additional design standards which allow flexibility in layout to a developer gained by pursuing a minor PRD. These would be in addition to the density bonuses laid out above.

We point out all of the above simply to note that the likelihood of residential development not using the Planned Residential path in existing residential zoning districts is limited. However, if a large-scale residential development (greater than 50 units) met the zoning standard for R-40, R-20, R-15, R-10 or R-6 there is no max threshold, under the current code, that would require rezoning to a conditional zoning district. The amendment as currently written would establish that greater than 50 units would require a conditional rezoning.

AMENDMENT ANALYSIS – COMPREHENSIVE PLAN CONSISTENCY (ARTICLE 11-4)

COMPREHENSIVE PLAN CONSISTENCY	
Future Land Use	Strategy LU-3.5 Minimize Negative impacts from growth and land use changes on existing land uses. Some zoning map changes and other development applications may create short-term compatibilities with existing neighborhoods, even if they are consistent with the Future Land Use Plan. It is critical that City officials consider the full range of impacts of all development applications. In addition to conformance with the Future Land Use Plan.
	Action LU-3.5.1 Consider a full range of short and long term impacts when reviewing zone change applications and other proposals that introduce land use changes. When reviewing zone change applications, the City should consider whether applications demonstrate a clear public purpose.
	Action LU 3.5.2 Adopt zoning amendment review standards that formalize the considerations of Action LU-3.5.1
	Action LU-3.6.1 Conduct a comprehensive review of the Zoning Code and Map to identify and prioritize necessary changes, including but not limited to: New districts, Amendments to existing, districts, Amendments to review procedures and general provisions.

DRAFT COMPREHENSIVE PLAN CONSISTENCY AND REZONING REASONABLENESS STATEMENT

The petition is found to be **[consistent]** with the City of Hendersonville 2030 Comprehensive Plan based on the information from the staff analysis and the public hearing, and because:

The 2030 Comprehensive Plan Land Use and Development Chapter calls for the City to consider short- and long-term impacts on compatibility with existing development and further recommends the adjustment of review procedures to accomplish this goal as needed.

We **[find]** this petition to be reasonable and in the public interest based on the information from the staff analysis and the public hearing, and because:

DRAFT [Rationale for Approval]

- The petition addresses an incongruency in our existing zoning ordinance regarding the standard review process required of projects of a particular size.*
- The text amendment will permit the community to address potential short-term incompatibilities caused by new development, particularly infill development.*
-

DRAFT [Rational for Denial]

- The text amendment includes additional regulatory thresholds which will negatively impact the ability of the market to address on-going housing needs.*
- The text amendment is not targeted to individual zoning districts, marking changes that are too broadly impactful.*
-

PLANNING BOARD RECOMMENDATIONProject #: P22-25-ZTAMay 5, 2022

PETITION REQUEST: Zoning Text Amendment – CZD Rezoning Requirements

APPLICANT/PETITIONER: City of Hendersonville

PLANNING BOARD ACTION SUMMARY:

Staff gave a presentation on the city-initiated text amendment and reviewed the guidance from the Comprehensive Plan. Planning Board considered this item for 15 minutes. The main topics discussed by the Planning Board members related to the need for continuity in the zoning code and the specific districts that would be impacted.

The Planning Board voted 8-0 to recommend **APPROVAL** of this petition and adopted the following statements regarding comprehensive plan consistency and reasonableness:

COMPREHENSIVE PLAN CONSISTENCY AND REASONABLENESS STATEMENT:

The petition is found to be consistent with the City of Hendersonville 2030 Comprehensive Plan based on the information from the staff analysis and the public hearing, and because:

The 2030 Comprehensive Plan Land Use and Development Chapter calls for the City to consider short- and long-term impacts on compatibility with existing development and further recommends the adjustment of review procedures to accomplish this goal as needed.

We find this petition to be reasonable and in the public interest based on the information from the staff analysis and the public hearing, and because:

[Rationale for Approval]

- The petition addresses an incongruity in our existing zoning ordinance regarding the standard review process required of projects of a particular size.
- The text amendment will permit the community to address potential short-term incompatibilities caused by new development, particularly infill development

BOARD ACTION

- **Motion/Second:** Hunter Jones / **Tamara Peacock**
- **Yeas:** Hanley, Peacock, Brown, Robertson, Nace, Cromar, Jones, Glassman
- **Nays:** N/A
- **Absent:** Jon Blatt
- **Recused:** N/A



StarNews | The Dispatch | Times-News
Sun Journal | The Daily News | The Star
The Free Press | Gaston Gazette

Order Confirmation

Not an Invoice

Section 7, Item B.

Account Number:	488558
Customer Name:	City Of Hendersonville
Customer Address:	City Of Hendersonville 160 6Th AVE E City Clerk Hendersonville NC 28792-3775
Contact Name:	Angela Reece
Contact Phone:	828-697-3005
Contact Email:	areece@hvlnc.gov
PO Number:	

Date:	04/20/2022
Order Number:	7197615
Prepayment Amount:	\$ 0.00

Column Count:	1.0000
Line Count:	145.0000
Height in Inches:	0.0000

Print

Product	#Insertions	Start - End	Category
HEN Times-News	2	04/24/2022 - 05/01/2022	Govt Public Notices
HEN blueridgenow.com	2	04/24/2022 - 05/01/2022	Govt Public Notices

Total Order Confirmation

\$39.80

Ad Preview

Section 7, Item B.

PUBLIC HEARING NOTICE

Notice is hereby given that the City of Hendersonville City Council will hold four public hearings on Thursday, May 5, 2022, at 5:45 p.m., or as soon thereafter as possible in the City Operations Assembly Room located at 303 Williams Street, Hendersonville NC to consider the following:

I. Zoning Text Amendment – Conditional Zoning District (CZD) – Rezoning Required (P22-25-27A) – City staff initiated Zoning Text Amendment to establish a conditional zoning requirement for development or redevelopment of 20,000 square feet or more and the development of 50 residential units or more across all zoning districts within the City, subject to examinations explicitly established within the Zoning Ordinance.

II. Conditional Zoning District Hawkins Pointe (P22-16-CZD) – Application for a Conditional Zoning District from Clay Cooper of Woda Cooper Companies LLC. The applicant is requesting to rezone the subject property, PIN's 9568-48-8860, 9568-48-9996, 9568-58-1016, 9568-58-2974, 9568-58-491, and 9568-58-3724 and located on Sixth Avenue and Florida Avenue from MUC, Medical, Institutional, Cultural to UR CZD, Urban Residential Conditional Zoning District for the construction of a 3-4-story multi-unit, +/-55,500 sq ft multi-family development on approximately 1.66 acres. The applicant is applying to receive Low-Income Housing Tax Credits.

III. Conditional Zoning District – White Pine Villas (P22-15CZD) – Application for a Conditional Zoning District from Dennis Thorrington and Stephen Drake of WDT Development, LLC. The applicant is requesting to rezone the subject properties identified as PIN's 9670-70-6495, 9670-70-8697 and 9670-70-8864 and located at 2620 Chimney Rock Road from PRD CZD, Planned Residential Development Conditional Zoning District to PRD CZD, Planned Residential Development – Conditional Zoning District for the construction of a four-story, 78-unit, +/-48,500 sq. ft. multi-family development on approximately 4.44 acres. The applicant is applying to receive Low-Income Housing Tax Credits.

IV. Conditional Zoning District – Southgate Apartments (P21-62-CZD) – Application for a conditional rezoning from Suzanne Godsey of Site-work Studios, applicant and David W. Royster, III of Capital Funds, Inc., property owner. The applicants are requesting to rezone the subject property, PIN 9568-75-3382 and located off of Kanawha Road, from C-2, Secondary Business to CMU CZD, Central Mixed Use Conditional Zoning District for the construction of a 4-story, 70-unit, 81,897 sq ft multi-family development on approximately 3.63 acres.

Digital/written public hearing comments must be received twenty-four hours prior to the meeting (by 5:45 p.m. on Wednesday, May 3, 2022) to be considered by the City Council and must comply with security criteria in the Council's Public Comment Policy, available on the City's website.

Public hearing comments will also be accepted during the meeting from those attending in person and from those participating live via ZOOM at the designated time of this meeting. For security reasons screen sharing will not be allowed. Anyone wishing to submit written/digital public hearing comments for these public hearings prior to the meeting may visit <https://www.hendersonville-nc.gov/submitcomment> to submit their comment. It is not necessary to submit digital comments if you are planning to address City Council during the meeting.

The meeting instructions to join by Zoom will be available on the City's website calendar by visiting <https://www.hendersonville-nc.gov/events-calendar> and as follows:

Zoom information for the meeting is: <https://zoom.us/join>
Dial-in by phone: (440) 558-8655
Meeting ID: 822 004 5328
Passcode: 1847

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 no later than 24 hours in advance of the meeting (893) 897-3005.

87197615 4/24, 5/1/2022

PUBLIC HEARING NOTICE

Notice is hereby given that the City of Hendersonville City Council will hold four public hearings on Thursday, May 5, 2022, at 5:45 p.m., or as soon thereafter as possible in the City Operations Assembly Room located at 305 Williams Street, Hendersonville NC to consider the following:

- I. **Zoning Text Amendment – Conditional Zoning District (CZD) Rezoning Required (P22-25-ZTA)** - City staff initiated Zoning Text Amendment to establish a conditional zoning requirement for development or redevelopment of 50,000 square feet or more and the development of 50 residential units or more across all zoning districts within the City, subject to exemptions explicitly established within the Zoning Ordinance.

- II. **Conditional Zoning District – Hawkins Pointe (P22-16-CZD)** - Application for a Conditional Zoning District from Clay Cooper of Woda Cooper Companies LLC. The applicant is requesting to rezone the subject property, PIN's 9568-48-9860, 9568-48-9996, 9568-58-1916, 9568-58-2974, 9568-58-491, and 9568-58-3734 and located on Sixth Avenue and Florida Avenue, from MIC, Medical, Institutional, Cultural to UR CZD, Urban Residential Conditional Zoning District for the construction of a 3-4-story split, 52-unit, +/-55,500 sq ft multi-family development on approximately 1.66 acres. The applicant is applying to receive Low-Income Housing Tax Credits.

- III. **Conditional Zoning District – White Pine Villas (P22-13-CZD)** - Application for a Conditional Zoning District from Dennis Tharrington and Stephen Drake of WDT Development, LLC. The applicant is requesting to rezone the subject properties identified as PIN's 9670-70-6498, 9670-70-8697 and 9670-70-8864 and located at 2620 Chimney Rock Road. from PRD CZD, Planned Residential Development Conditional Zoning District to PRD CZD, Planned Residential Development Conditional Zoning District for the construction of a four-story, 78-unit, +/-88,500 sq. ft. multi-family development on approximately 4.64 acres. The applicant is applying to receive Low-Income Housing Tax Credits.

- IV. **Conditional Zoning District – Southgate Apartments (P21-62-CZD)** - Application for a conditional rezoning from Suzanne Godsey of Sitework Studios, applicant and David W. Royster, III of Capitol Funds, Inc., property owner. The applicants are requesting to rezone the subject property, PIN 9568-75-5382 and located off of Kanuga Road, from C-2, Secondary Business to CMU CZD, Central Mixed Use Conditional Zoning District for the construction of a 4-story, 70-unit, 81,897 sq ft multi-family development on approximately 3.63 acres.

Digital/written public hearing comments must be received twenty-four hours prior to the meeting (by 5:45 p.m. on Wednesday May 4th) to be considered by the City Council **and must** comply with security criteria in the Council's Public Comment Policy, available on the City's website.

Public hearing comments will also be accepted during the meeting from those attending in person and from those participating live via ZOOM at the designated time at this meeting. For security reasons screen sharing will not be allowed. Anyone wishing to submit written/digital public hearing comments for these public hearings prior to the meeting may visit <https://www.hendersonvillenc.gov/comment> to submit their comment. It is not necessary to submit digital comments if you are planning to address City Council during the meeting.

The meeting instructions to join by Zoom will be available on the City's website calendar by visiting <https://www.hendersonvillenc.gov/events-calendar> and as follows:

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

Meeting ID: 822 0104 2528

Passcode: 1847

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 no later than 24 hours in advance of the meeting (828) 697-3005.

Run two times: Sunday, April 24, 2022, Sunday, May 1, 2022



CITY OF HENDERSONVILLE

AGENDA ITEM SUMMARY

PLANNING DIVISION

SUBMITTER: Matthew Manley, Planning Manager

MEETING DATE: May 5, 2021

AGENDA SECTION: Public Hearing

DEPARTMENT: Community Development

TITLE OF ITEM: Rezoning: Conditional Zoning District – Hawkins Pointe (P22-16-CZD) – Matthew Manley, AICP – Planning Manager

SUGGESTED MOTION(S):

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 (PINS: 9568-58-3734; 9568-58-4911; 9568-58-2974; 9568-48-9996; 9568-58-1916 and 9568-48-9860 from MIC (Medical Institutional Cultural) to UR (Urban Residential – Conditional Zoning District) based on the site plan and list of conditions submitted by and agreed to by the applicant, [dated April 1, 2022,] and presented at this meeting and subject to the following::

1. The development shall be consistent with the site plan, including the list of applicable conditions contained therein, and the following permitted uses

Permitted Uses:

1. Residential Dwellings, Multi-Family

[for amendments to uses or conditions discussed and agreed upon in the Council meeting (between City & Developer) and not yet represented on the site plan, please use the following language, disregard #2 if not needed]

2. Permitted uses and applicable conditions presented on the site plan shall be amended to include:

3. The petition is found to be consistent with the City of Hendersonville 2030 Comprehensive Plan based on the information from the staff analysis and because:

For Recommending Denial:

I move City Council **deny** an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of the subject property (PINS: 9568-58-3734; 9568-58-4911; 9568-58-2974; 9568-48-9996; 9568-58-1916 and 9568-48-9860 from MIC (Medical Institutional Cultural) to UR (Urban Residential – Conditional Zoning District) based on the following:

1. The petition is found to be consistent with the City of Hendersonville 2030 Comprehensive Plan based on the information from the staff analysis and because:

1. The Urban Institutional designation calls for Multi-Family Residential as a secondary recommended land use and compliments the surrounding primary recommended land uses (public & institutional uses and offices) and the proposed location and site plan aligns with a majority of development guidelines listed under LU 11.4/12.4

2. We do not find this petition to be reasonable and in the public interest based on the information from the staff analysis, public hearing and because:

1. The petition proposes a building mass that is out of scale with the abutting single-family homes to the south of the site.

<div>1. The Urban Institutional designation calls for Multi-Family Residential as a secondary recommended land use and compliments the surrounding primary recommended land uses (public & institutional uses and offices) and the proposed location and site plan aligns with a majority of development guidelines listed under LU 11.4/12.4</div> <div>4. Furthermore, we find this petition to be reasonable and in the public interest based on the information from the staff analysis, public hearing and because:</div> <div><div>1. The petition is located in a Priority Infill Area which recommends redevelopment of underutilized lots</div><div>2. The petition provides infill development utilizing existing infrastructure</div><div>3. The petition provides additional housing in close proximity to large employment opportunities, medical needs, shopping and educational centers.</div><div>4. The petition proposes affordable homes for those aged 55+</div><div>5. The petition is in scale with other large medical, institutional, and educational along 6th Ave/US 64 major throughfare corridor.</div><div>6. The MIC zoning district permits hospitals and office buildings by-right up to 50,000 Sq Ft. The proposed multi-family development is less intense than these other permitted uses.</div><div>7. The MIC zoning permits Congregate Care, Nursing Homes, Rest Homes and Progressive Care Facilities.</div><div>8. Portions of the site plan that are within the National Register Historic District do not contain any existing or proposed structures.</div></div> <div>[DISCUSS & VOTE]</div>	<div><div>2. The petition is partially located in a National Register Historic District and proposes a design and site size which is out of character with abutting properties and the West Side Historic District.</div><div>3. Other permitted uses in the MIC zoning district which contain a residential component have additional limitations which would not permit the scale or density of the proposed project – limitations on 3 of bedrooms/acre, minimum lot size, etc.</div><div>4. The Urban Residential Zoning District requires that only parcels designated as Medium Intensity Neighborhood, High Intensity Neighborhood, Neighborhood Activity Center, Regional Activity Center and Business Center shall be considered for Urban Residential.</div></div> <div>[DISCUSS & VOTE]</div>
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SUMMARY: The City of Hendersonville is in receipt of an application for a Conditional Zoning District from David & Clay Cooper with Woda Cooper Companies, Inc (applicant) and Dr. Leon Elliston with Regional Properties ANC General Partnership and Nicholas Iosue with Castles & Cottages, LLC, (property owners). The applicants are requesting to rezone

the subject properties (PINs 9568-58-3734; 9568-58-4911; 9568-58-2974; 9568-48-9996; 9568-58-1916 and 9568-48-9860) from MIC (Medical Institutional Cultural) to UR-CZD (Urban Residential – Conditional Zoning District), for the construction of 49’ 5” tall, 52-unit affordable housing tax credit apartment building on approximately 1.66 acres (Density = 31.3 units/acre). The UR district does not have a density cap.

There is one 3/4-story split building proposed with a total of 55,500 Sq Ft (Gross Floor Area). The stated use of the site is residential, multi-family.

This is a redevelopment project. The site is currently vacant with the exception of 1 building (residential converted to commercial). The site was previously occupied by multiple buildings.

PROJECT/PETITIONER NUMBER:	P22-16-CZD
PETITIONER NAME:	Clay Cooper, Woda Cooper Companies, Inc. (applicant) Dr. Leon Elliston, Regional Properties ANC General Partnership and Nicholas Iosue, Castles & Cottages, LLC, (owner / developer)
ATTACHMENTS:	1. Staff Report 2. Proposed Site Plan / Elevations 3. Neighborhood Compatibility Summary 4. Tree Board Summary 5. Planning Board Summary 6. Proposed Zoning Map 7. Draft Ordinance 8. Application / Owner Signature Addendum

Ordinance # ____ - ____

**AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND
THE OFFICIAL ZONING MAP OF THE CITY OF HENDERSONVILLE FOR PARCEL
POSSESSING PIN NUMBERS 9568-58-3734; 9568-58-4911; 9568-58-2974; 9568-48-9996; 9568-
58-1916 and 9568-48-9860 BY CHANGING THE ZONING DESIGNATION FROM MIC
(MEDICAL INSTITUTIONAL CULTURAL) TO UR (URBAN RESIDENTIAL –
CONDITIONAL ZONING DISTRICT)**

IN RE: Parcel Numbers: 9568-58-3734; 9568-58-4911; 9568-58-2974; 9568-48-9996; 9568-58-1916 and 9568-48-9860
Addresses: 745 Florida Ave; 738 6th Ave W; 728 6th Ave W; and 714 6th Ave W
Hawkins Pointe (File # P22-16-CZD)

WHEREAS, the City is in receipt of a Conditional Rezoning application from applicant, David & Clay Cooper with Woda Cooper Companies, Inc and property owners, Dr. Leon Elliston with Regional Properties ANC General Partnership and Nicholas Iosue with Castles & Cottages, LLC for the development of 52 Apartments on approximately 1.66 acres, and

WHEREAS, the Planning Board took up this application at its regular meeting on April 11, 2022; voting 7-1 to recommend City Council deny 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 May 5, 2022, 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: 9568-58-3734; 9568-58-4911; 9568-58-2974; 9568-48-9996; 9568-58-1916 and 9568-48-9860 from MIC (Medical Institutional Cultural) to UR (Urban Residential – 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 based on the site plan submitted by the applicant and conditions listed therein and subject to the following.
 - a. Permitted uses shall include:
 - i. Residential Dwellings, Multi-Family
 - b. Conditions that shall be satisfied prior to final site plan approval include:
 - i. The development shall be consistent with the preliminary site plan and conditions therein as submitted and dated April 1, 2022 [or as modified and presented].

3. This ordinance shall not be effective until the stipulated list of use(s) and conditions, established herein, is consented to in writing by the applicant and all owners of the subject property. Upon such written consent, this ordinance shall be effective retroactive to the date of its adoption.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 5th day of May, 2022.

Attest:

Barbara G. Volk, Mayor, City of Hendersonville

Angela L. Reece, City Clerk

Approved as to form:

Angela S. Beeker, City Attorney

IN RE: Parcel Numbers: 9568-58-3734; 9568-58-4911; 9568-58-2974; 9568-48-9996; 9568-58-1916 and 9568-48-9860
Addresses: 745 Florida Ave; 738 6th Ave W; 728 6th Ave W; and 714 6th Ave W
Hawkins Pointe (File # P22-16-CZD)

With their signatures below, the undersigned applicant(s) and property owner(s) consent to and agree to the imposition of all conditions stated.

Applicant/Developer: Clay Cooper, Woda Cooper

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Property Owner: Regional Properties ANC General Partnership, Dr. Leon Elliston

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Property Owner: Castles & Cottages, Nicholas Iosue.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

HAWKINS POINTE APARTMENTS (P22-16-CZD)
CITY OF HENDERSONVILLE - COMMUNITY DEVELOPMENT STAFF REPORT

PROJECT SUMMARY 2

EXISTING ZONING & LAND USE 3

SITE IMAGES..... 4

SITE IMAGES..... 5

SITE IMAGES 6

SITE IMAGES 7

REZONING HISTORY – 8

FUTURE LAND USE 9

REZONING ANALYSIS – COMPREHENSIVE PLAN CONSISTENCY (ARTICLE 11-4) 10

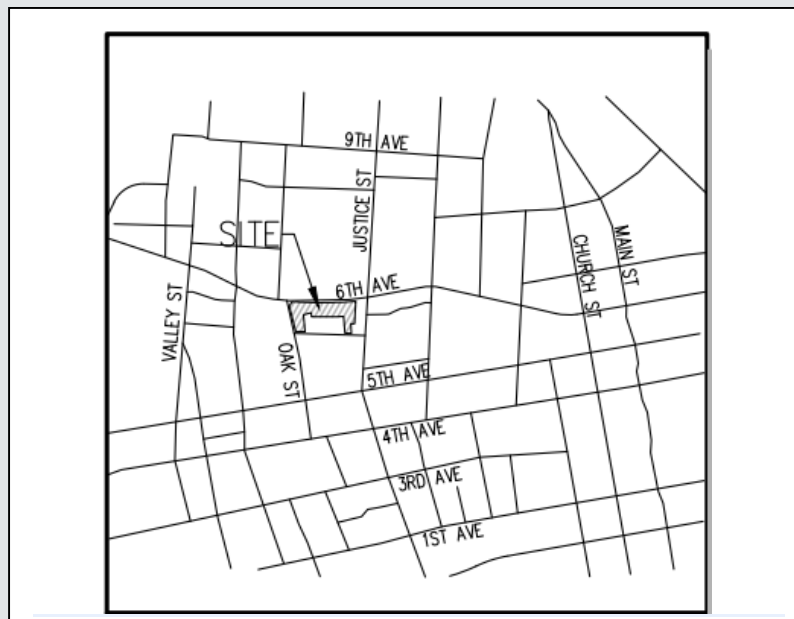
REZONING ANALYSIS – GENERAL REZONING STANDARDS (ARTICLE 11-4) 12

DRAFT COMPREHENSIVE PLAN CONSISTENCY AND REZONING REASONABLENESS STATEMENT 13



PROJECT SUMMARY

- Project Name & Case #:
 - Hawkins Pointe Apartments
 - P22-16-CZD
- Applicant & Property Owner:
 - Dr. Leon Elliston (Regional Properties ANC General Partnership) and Nicholas J. Iosue (Castles and Cottages LLC) [Owners]
 - David Cooper Jr, Woda Cooper Companies, Inc. {Applicant/Developer}
- Property Address:
 - 714, 728, 738, 746 Sixth Ave West, Hendersonville, NC
- Project Acreage:
 - 1.66 Acres
- Parcel Identification (PIN):
 - 9568-58-3734; 9568-58-4911; 9568-58-2974; 9568-48-9996; 9568-58-1916 and 9568-48-9860
- Current Parcel Zoning:
 - MIC (Medical, Cultural, Institutional) Zoning District
- Requested Zoning:
 - UR-CZD (Urban Residential - Conditional Zoning District)
- Future Land Use Designation:
 - Urban Institutional
- Neighborhood Compatibility Meeting:
 - February 28, 2022



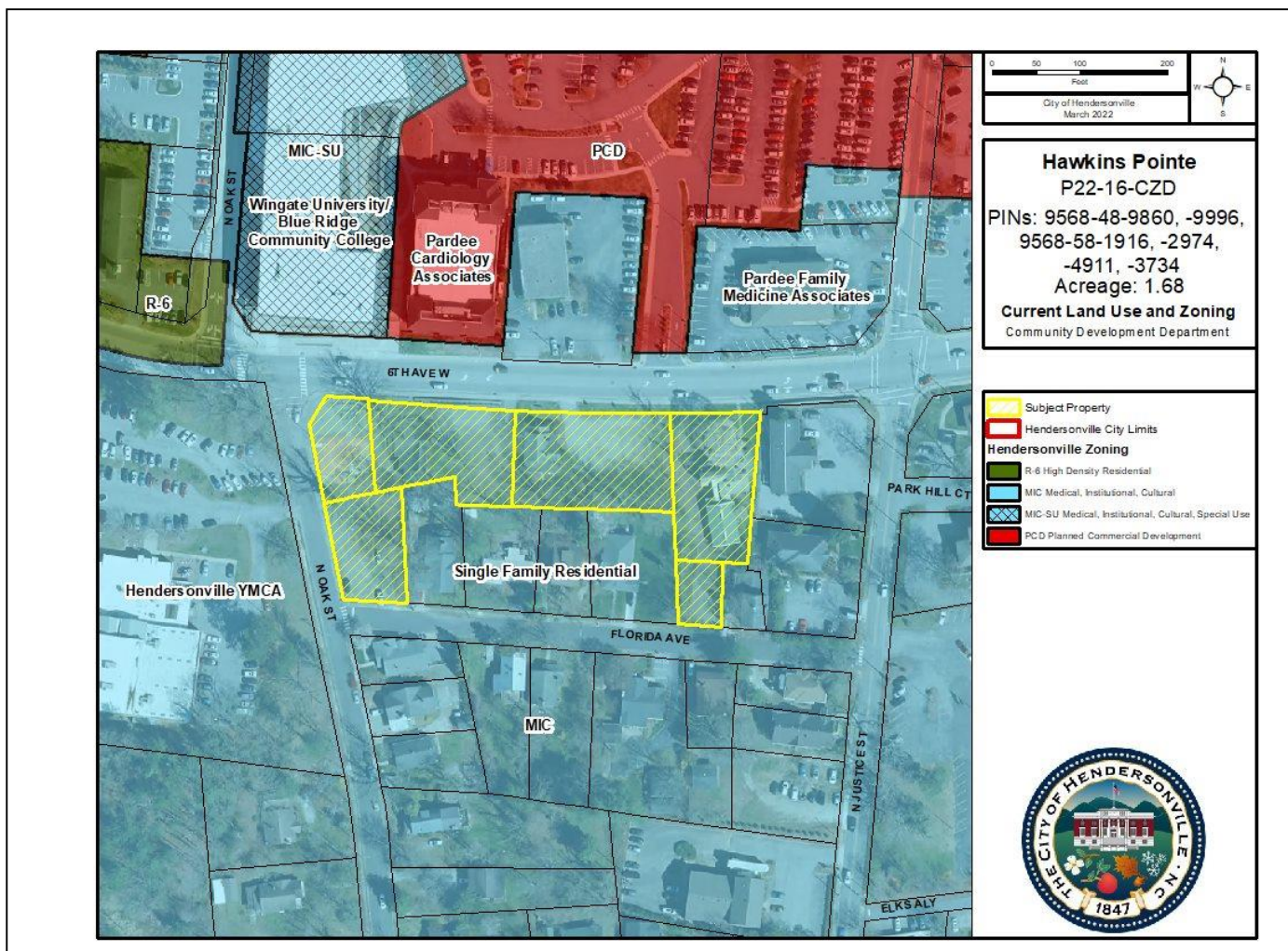
SITE VICINITY MAP

The City of Hendersonville is in receipt of an application for a Conditional Zoning District from David & Clay Cooper with Woda Cooper Companies, Inc (applicant) and Dr. Leon Elliston with Regional Properties ANC General Partnership and Nicholas Iosue with Castles & Cottages, LLC, (property owners). The applicants are requesting to rezone the subject properties (PINs 9568-58-3734; 9568-58-4911; 9568-58-2974; 9568-48-9996; 9568-58-1916 and 9568-48-9860) from MIC (Medical Institutional Cultural) to UR-CZD (Urban Residential – Conditional Zoning District), for the construction of 49' 5" tall, 52-unit affordable housing tax credit apartment building on approximately 1.66 acres (Density = 31.3 units/acre). The UR district does not have a density cap.

There is one 3/4-story split building proposed with a total of 55,500 Sq Ft (Gross Floor Area). The stated use of the site is residential, multi-family.

This is a redevelopment project. The site is currently vacant with the exception of 1 building. It was previously occupied by multiple buildings.

EXISTING ZONING & LAND USE



City of Hendersonville Current Zoning

The subject parcel is within a MIC zoning district that encircles the Pardee Hospital Campus. South of US 64, the MIC district encompasses all of the properties to 5th Ave (including the properties south of 5th Ave) and primarily extends from Fleming St to N Oak St from east to west. The YMCA campus west of N. Oak St is also included in the MIC zoning district.

There are several institutional, medical, educational, and recreational uses in vicinity of this site. In closest proximity are the Wingate University building and Pardee Hospital north of 6th Ave, the Elks Lodge to the east and the YMCA to the west. Additionally, Hendersonville Elementary, Middle and High School are less than ½ mile walk from the site. Main St is also less than ½ mile from the site.

A portion of the subject property is within the West Side National Register Historic District. The parcels included in the designation are vacant and no longer contain structures. This National Register District extends south of the subject property towards 3rd Ave and extends east to west from Buncombe St to Blythe St.

SITE IMAGES



View of proposed parking drive aisle on east side of site



View along 6th Ave (Hwy 64)

SITE IMAGES



View of adjacent single-family homes at rear of project site



View from center of site facing west. Existing structure to be demolished.

SITE IMAGES



Large White Oak on site



Intersection of Florida Ave at N. Oak St

SITE IMAGES



View along Florida Ave



Possible parking for neighboring uses currently utilizing site

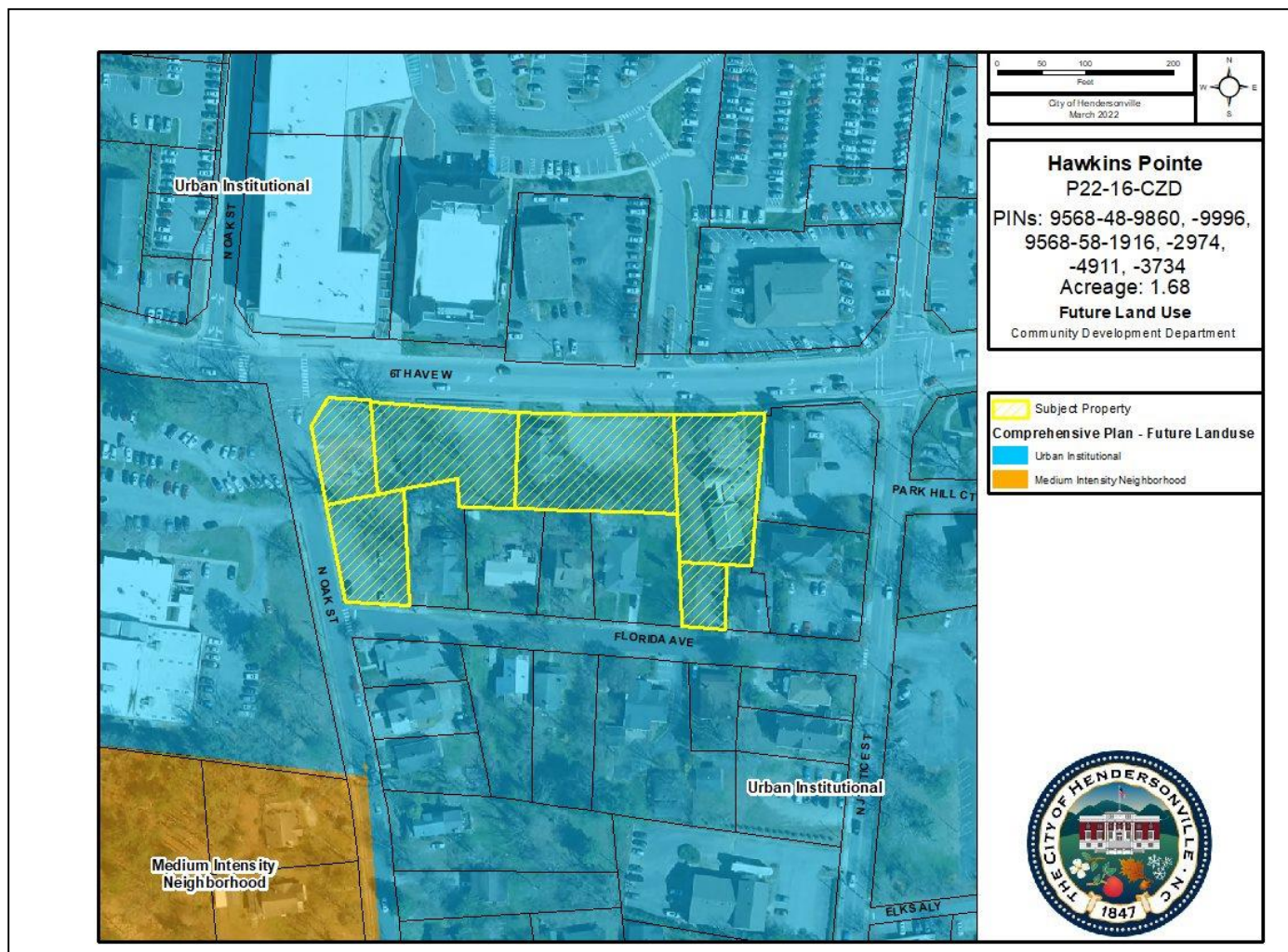
REZONING HISTORY –

Prior Zoning	Summary of Prior Petition	Status
Unknown		
MIC	City-initiated creation of MIC District	Approved 3-4-65

The specific previous zoning for this currently vacant parcel is unknown but we do know that the site had previously been occupied by 5 buildings as recently as 2015.



FUTURE LAND USE



City of Hendersonville Future Land Use Map

The subject property is located within an area designated as Urban Institutional. This designation encompasses an area that generally runs east to west from N Church St to Blythe St and south to north from 5th Ave to north of 9th Ave. Medium Intensity Neighborhood is the only other Future Land Use designation in proximity of the site and is found to the southwest of Florida Ave.

REZONING ANALYSIS – COMPREHENSIVE PLAN CONSISTENCY (ARTICLE 11-4)

COMPREHENSIVE PLAN CONSISTENCY	
Future Land Use	<p>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 [CONSISTENT]</p> <p>Strategy LU-12.1. Locations:</p> <ul style="list-style-type: none"> • Area surrounding Pardee Memorial Hospital [CONSISTENT] <p>Strategy LU-12.3. Secondary recommended land uses:</p> <ul style="list-style-type: none"> • Multi-family residential [CONSISTENT] <p>Strategy LU-12.4. Development guidelines:</p> <ul style="list-style-type: none"> • Similar development standards to Downtown Support • Encouragement of neighborhood master-planning that links hospital with offices, services and Downtown [INCONSISTENT] • Development and maintenance of traffic calming improvements [LIMITED] <p>Strategy LU-11.4 (Downtown Support) Development Guidelines:</p> <ul style="list-style-type: none"> • Minimal front setback [CONSISTENT] • Rear or limited side parking only [CONSISTENT] • Façade articulation [CONSISTENT] • Ground-floor storefronts and/or architectural detailing on parking structures [INCONSISTENT]
Land Use & Development	<p>Growth Management (Map 8.3a):</p> <p>Primarily designated as a “Priority Infill Area” - 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 [CONSISTENT]</p> <p>Southern portions are designated as “Historic Preservation Area” - National or local historic districts in which the City should uphold policies that preserve historic integrity and character [INCONSISTENT].</p> <p>Goal LU-1. Encourage infill development that utilizes existing infrastructure in order to maximize public investment and revitalize existing neighborhoods.</p> <p>Strategy LU-1.1. Encourage infill development and redevelopment in areas planned for high-intensity development, as indicated by the “Priority Infill Areas” on Map 8.3a. [CONSISTENT]</p> <p><u>Infill development:</u> Development that takes place within existing neighborhoods, making maximum use of the existing infrastructure instead of building on previously undeveloped land.</p> <p>-Centers for Disease Control and Prevention, Healthy Places Terminology</p> <p>Examples of opportunities for infill development include:</p> <ul style="list-style-type: none"> • Scattered vacant lots • Underutilized commercial properties
Population & Housing	<p>Strategy PH-1.1 – Promote compatible infill development [CONSISTENT]</p> <p>Strategy PH-1.4 - Allow redevelopment and/or reuse of single-family homes that directly front on arterials into office or high-density residential uses in coordination with the Future Land Use Map. As development increases along an arterial, properties with frontage on the arterial increase in value and become more desirable locations for higher-intensity uses such as multi-family residential and commercial uses. Furthermore, placing these uses on major arterials helps to keep traffic away from local residential streets and provides needed visibility and access for commercial uses [CONSISTENT]</p>

	<p>Strategy PH-2.2 – Encourage provision of affordable housing units in new developments. [CONSISTENT]</p> <p>Strategy PH-3.2 - Encourage mixed land use patterns that place residents within walking distance of services. [CONSISTENT]</p>
Natural & Environmental Resources	There are no Goals, Strategies, or Actions that are directly applicable to this petition.
Cultural & Historic Resources	<p>Two parcels included in the rezoning process along Florida Ave are included in the West Side National Register Historic District</p> <p>Goal CR-1 - Preserve the viability and individuality of Hendersonville’s historic neighborhoods in order to maintain their role in supporting community pride, livability and identity.</p>
Community Facilities	<p>Strategy CF-1.3. Encourage location of community facilities in mixed-use community centers with excellent multimodal access.</p> <p>Strategy CF-6.1. Encourage community open-space or play areas in new or redeveloped residential neighborhoods.</p>
Water Resources	<p>The proposed project would be serviced by City Water and Sewer.</p> <p>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.</p>
Transportation & Circulation	<p>The project is located on a Major Thoroughfare (6th Ave) according to Map 7.3a.</p> <p>Strategy TC-1.1. Encourage mixed-use, pedestrian-friendly development that reduces the need to drive between land uses.</p> <p>Strategy TC-3.1. Continue to develop and require a <u>connected</u> street grid.</p> <p>Strategy TC-5.1. Incorporate aesthetic improvements such as landscaped medians and street trees along roadways.</p>

REZONING ANALYSIS – GENERAL REZONING STANDARDS (ARTICLE 11-4)

GENERAL REZONING STANDARDS	
Compatibility	<p>Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject property –</p> <p><u>Compatibilities:</u></p> <ul style="list-style-type: none"> - Given the wide range of intense uses that are present in the surrounding area and permitted within the MIC zoning district, the proposed project could be considered compatible. The MIC Zoning District permits similar residential uses such as Congregate Care, Nursing Homes, Rest Homes and Progressive Care Facilities. - Given the level of traffic and classification of 6th Ave / US 64 as a Major Thoroughfare, the project could be considered compatible. - The massing of the building refers to the aggregate size of a building, or the total height, width, and depth of all its parts. The massing of the proposed building is 45' 9" tall, 63' deep x 264' wide. The massing is in scale with the other medical / institutional uses in the vicinity of the project: Wingate – 3-story, 133'x300'; Pardee Medical Office – 2-story, 100'x170'; YMCA – 2-story, 155'x185' etc. <p><u>Incompatibilities:</u></p> <ul style="list-style-type: none"> - The current and surrounding zoning of MIC does not permit multi-family residential uses. Minor PRD is permitted at a rate of 5.5 units/acre which would only allow 9 townhomes on this site. Congregate Care, Nursing Homes, Rest Homes and Progressive Care Facilities, though similar to the proposed use, are only permitted in the MIC District on sites with a minimum of 3 acres. - The height of the proposed project is significantly taller than the 1 - 1.5-story single-family homes found along Florida Ave. The massing of this building (3/4-story split and 63' x 264') is out of scale with the surrounding single-family neighborhood. - Additionally, the National Register Historic District is a factor that suggests a development of this scale and design would be incompatible. However, the portions of the site plan that are within the NR District do not contain any proposed structures.
	<p>Whether and the extent to which there are changed conditions, trends or facts that require an amendment -</p> <p>Affordable housing needs continue to be a significant concern as housing demand far surpasses housing supply in our area. The need for housing within close proximity of the Medical, Institutional and Cultural uses in this district has not been addressed by recent housing projects as the MIC zoning district does not permit multi-family housing.</p>
Changed Conditions	

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 -
	The proposed 52 residential units would provide much needed additional housing while making efficient use of land (under 2 acres) within walking distance to a number of opportunities for employment, recreation, education and shopping.
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 -
	As an infill project, city services and facilities are in place to serve the project without costly extensions or new maintenance requirements. A Water / Sewer Availability Request has not been submitted for this project. US 64 is a NCDOT maintained road while Florida Ave and N. Oak St are both local streets maintained by the City of Hendersonville. US64/6 th Ave is designated as major throughfare with sidewalk facilities. The project is sited along existing Apple Country public transportation routes (red and white routes).
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 -
	This site was previously developed and is proposed to be redeveloped. Some exiting mature urban canopy trees would be lost as result of this project (8 of 16 to be removed. New plantings, including street trees, would provide canopy trees (10), small shade trees (20), and shrubs.

DRAFT COMPREHENSIVE PLAN CONSISTENCY AND REZONING REASONABLENESS STATEMENT

The petition is found to be **consistent** with the City of Hendersonville 2030 Comprehensive Plan based on the information from the staff analysis and because:

The Urban Institutional designation calls for Multi-Family Residential as a secondary recommended land use and compliments the surrounding primary recommended land uses (public & institutional uses and offices) and the proposed location and site plan aligns with a majority of development guidelines listed under LU 11.4/12.4.

We find this petition to be reasonable and in the public interest based on the information from the staff analysis and the public hearing, and because:

DRAFT [Rationale for Approval]

- *The petition is located in a Priority Infill Area which recommends redevelopment of underutilized lots*
- *The petition provides infill development utilizing existing infrastructure*
- *The petition provides additional housing in close proximity to large employment opportunities, medical needs, shopping and educational centers.*
- *The petition proposes affordable homes for those aged 55+*
- *The petition is in scale with other large medical, institutional, and educational along 6th Ave/US 64 major throughfare corridor.*
- *The MIC zoning district permits hospitals and office buildings by-right up to 50,000 Sq Ft. The proposed multi-family development is less intense than these other permitted uses.*
- *The MIC zoning permits Congregate Care, Nursing Homes, Rest Homes and Progressive Care Facilities.*
- *Portions of the site plan that are within the National Register Historic District do not contain any existing or proposed structures.*

DRAFT [Rational for Denial]

- *The petition proposes a building mass that is out of scale with the abutting single-family homes to the south of the site.*
- *The petition is partially located in a National Register Historic District and proposes a design and site size which is out of character with abutting properties and the West Side Historic District.*
- *Other permitted uses in the MIC zoning district which contain a residential component have additional limitations which would not permit the scale or density of the proposed project – limitations on 3 of bedrooms/acre, minimum lot size, etc.*
- *The Urban Residential Zoning District requires that only parcels designated as Medium Intensity Neighborhood, High Intensity Neighborhood, Neighborhood Activity Center, Regional Activity Center and Business Center shall be considered for Urban Residential.*

STAFF SITE PLAN REVIEW – SUMMARY COMMENTS

PROPOSED REQUEST DETAILS

- Site Plan Summary:
 - The site plan accompanying this petition contains the following provisions:
 - 52-Unit Apartment Development on 1.66 Acres (Density = 31.3 Units/Acre)
 - 1 – 3/4-story split building (45' 9" Height)
 - 51,500 Sq Ft of Gross Floor Area
 - Access on Major Thoroughfare
- Proposed Uses:
 - Residential, Multi-Family
- Developer Conditions:
 - Developer Proposed Concessions:
 - As noted in the development summary the proposed development is actually a net decrease in the impervious coverage on the property. However, due to existing stormwater issues in the Florida Ave and the Wash Creek subwatershed the developer agrees to provide stormwater retention for the 1 year – 24-hour storm event to help mitigate runoff issues from the site. The proposed system will consist of an underground system that provides stormwater quantity controls only.
 - Proposed development is LIHTC (low-income housing tax credit) with all (52 units) of the units at or below 80% AMI. Proposed development will provide senior affordable housing as governed by North Carolina Housing Finance Agency requirements.
 - Developer will contract a third-party professional to monitor the existing home foundations during the construction process. This is limited to the following 4 adjacent properties (Parcels 9568580820-Keates, 9568581873-Faust, 9568582843-Faust and 9568582758-Smolksi/Crabtree).
 - Developer will contract with an arborist to evaluate the existing 48" oak on 6th Ave and the 60" maple on Oak St to determine the existing health of the trees and the viability of them surviving the proposed development and improvements. If the arborist feels the trees are in good condition and will survive developer will take the necessary precautions to protect the trees during the construction process. If the arborist does not believe that the trees are in good health and will not survive the construction process the trees shall be replaced with large canopy trees.
 - Developer shall provide evergreen shrubs and landscape planter at intersection to provide buffer screen for proposed parking.

- Developer proposes to increase visual interest with varied heights of the parapet along each facade as well as the heights of the wall projections.
- All preserved trees will have english ivy removed from the trunks and limbs.
- Developer Proposed Conditions:
 - Developer request that relief be granted from Section 5-25-2 of the Zoning Code as it relates to Future Land Use Designation of Urban Institutional not being listed as a permitted designation for Urban Residential zoning.
 - Based on the site constraints and the project being affordable housing the developer request to keep the building facade projections to 1'. Since this building does not have a hipped roof, increasing the depth of the projections along the façade does not add a significant amount of variation to the elevations. To help increase visual interest, we have varied the heights of the parapet along each façade as well as the heights of the wall projections. Since the site is very tight as is, we would like to propose keeping the projections at 1' instead of 2', as we believe the elevations provide enough variation and visual interest as is.
 - Developer shall provide tree protection during construction process. As discussed during the tree board meeting, the proposed tree protection fence limits will not meet the code requirements of 1' for every 1" of tree diameter based on the existing impervious coverage and tight constraints of the site. Proposed tree protection will provide the maximum amount of tree protection as possible.
 - Developer has provided a preliminary Trip Generation Memo Comparison from JM Teague to the City but request that the full Traffic Impact Analysis be deferred and performed after the rezoning is approved.
 - Developer request to reduce the width of the Type "B" buffer from 10' to 8' along the side yards for PINS 9568-58-2758 and 9568-58-3783. Due to the narrowness of the property it is not feasible to provide the minimum required width of 24' for the driveway and 5' for the sidewalk. The proposed plantings will remain the same.

OUTSTANDING ISSUES & PROPOSED CONDITIONS

COMMUNITY DEVELOPMENT

Site Plan Comments:

The site plan accompanying this petition meets the standards established by the Zoning Ordinance for Urban Residential (5-25), Mixed Use Zoning (Article XVIII) and Site Plan Review (7-3) with the following exceptions:

- Per 5-25-2 – The Urban Institutional Future Land Use Designation is not one of the listed FLUDs that permits Urban Residential zoning. Those permitted include: Medium Intensity Neighborhood, High Intensity Neighborhood, Neighborhood Activity Center, Regional Activity Center and Business Center. [see proposed developer condition]
- Per 5-25-5.4 & 18-6-4.8 - Vinyl Siding would not be considered compatible with the architectural vernacular of the region nor similar to the materials already being used in the neighborhood. [resolved]
- Per 5-25-5.6 / 5.8 Consider “street wall” (brick or wrought iron with brick columns) at the corner of 6th Ave and N Oak St to offset lack of building edge and to create a comfortable pedestrian realm. Also see Section 15-9 b) of Landscaping Chapter for info on walls adjacent to streets. [resolved]
- Per 5-25-5.12 - Provide details on Elevations to address the standards required under b) 1,2,3. [unresolved – see developer proposed condition]
- Per 5-25-5.13 - Provide sidewalk connection to Florida Ave on east side of site. Provide crosswalk and sidewalk connection in the bump-outs in the parking area on the west side parking lot. [unresolved]
- Per 5-25-5.15 - Existing sidewalks need to be increased to 7' along the perimeter of the site. At a minimum the sidewalks on 6th Ave shall be widened to 7'. See 5.17 for information on street trees if they would be impacted as proposed. [resolved]
- Per 5-25-5.18 - Ensure that no parking space along the Keats property is more than 45' from a tree. Ensure Section 15-9 c) is met as required by 5-25-5.18. [resolved]
- Per 5-25-5.20 e) - An additional amenity is required [resolved]
- Provide Landscaping calculations [resolved]

Proposed City-Initiated Conditions:

- None

CITY ENGINEER

Site Plan Comments:

- None

Proposed City-Initiated Conditions:

- None

WATER / SEWER

Site Plan Comments:

- Need back-flow prevention on fireline - will need to apply and have approval from city before install

Proposed City-Initiated Conditions:

- None

FIRE MARSHAL

Site Plan Comments:

- The location of the FDC is important. If on the front of the building and want use the hydrant on North side of 6th Ave, then 6th Ave will be shut down. If FDC is on East side of building a hydrant will be required since maximum distance between hydrant and FDC is 100 feet. If hydrant on Oak Street used for FDC a hot box will be required to keep the distance less than 100 feet. A standpipe system will be required due to height of building.

Proposed City-Initiated Conditions:

- None

STORMWATER ADMINISTRATOR**Site Plan Comments:**

- There are known stormwater infrastructure issues on Florida Ave and along the Wash Creek subwatershed in general.

Proposed City-Initiated Conditions:

- The City is requesting that the developer provide retention for 1yr-24hr Storm event to help mitigate additional runoff from the site. While there is no increase in pre. vs. post development impervious area, it should be noted that none of the previous properties had stormwater controls in place and this development provides an opportunity to address those existing deficiencies. [developer agreed]

FLOODPLAIN ADMINISTRATOR**Site Plan Comments:**

- None

Proposed City-Initiated Conditions:

- None

PUBLIC WORKS**Site Plan Comments:**

- Trunks of new tree plantings are not permitted within 35' of intersection [resolved]
- Encroachment permits are needed for the two driveways: Oak Street and Florida Avenue.

Proposed City-Initiated Conditions:

- None

NCDOT**Site Plan Comments:**

- No Street Tree trunks permitted within the Sight Triangle on 6th Ave/US64. Shift center of tree outside of sight triangles. [resolved]

- Driveway Permit needed for two access points on 6th Ave (US 64). Submit site plan to NCDOT.

Proposed City-Initiated Conditions:

- None

TRANSPORTATION CONSULTANT

Site Plan Comments:

- The Urban Residential District has the following statement:
 - 5-25-2.3.1 Traffic impact analysis. A traffic impact analysis developed in compliance with section 6-19 below is required for all urban residential developments and shall be submitted with the application for the urban residential development. The city may defer the traffic impact analysis until after a rezoning to a conditional zoning district is approved for the project only in those circumstances where city council, in the absence of a traffic impact analysis, finds that the existing public road system has adequate capacity to handle projected traffic flow as required by section 7-11, below.

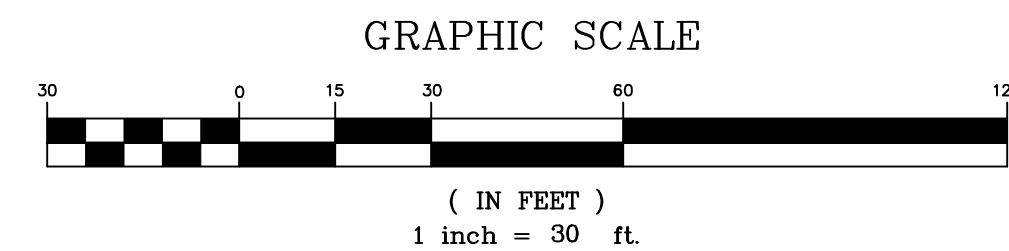
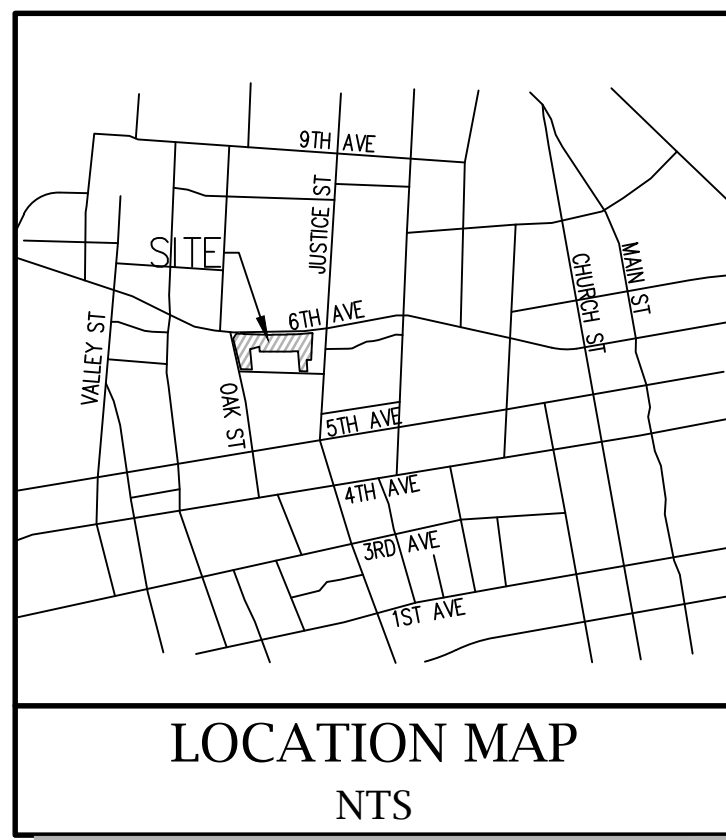
Developer Proposed Condition Response:

- The City's consulting Transportation Engineer makes the following recommendation:
 - In looking at this section of 6th Ave, there is approximately 14,000 vehicles per day. 6th Ave has a theoretical capacity of 18,000 to 20,000 vpd +/- . So theoretically we are at a volume to capacity ratio of 0.7 or 70%. The proposed development only adds around 300 vpd so it will not exceed the v/c ratio or capacity of the develop, This may be used as justification for deferring the TIA according to the provisions of the Zoning Ordinance.

TREE BOARD

Site Plan Comments & Recommended Conditions:

- See attached Tree Board Summary



LANDSCAPING CALCULATION:

PERMETER AND INTERIOR PLANTINGS

1 TREE AND 2 SHRUBS REQUIRED FOR EVERY 1,500 SQ. FT. OF VEHICULAR USE AREA:

- TOTAL VEHICULAR USE AREA: ±25,800 SF
- TOTAL TREES REQUIRED/PROPOSED: 18/18

WHEN A DEVELOPMENT CONTAINS 20 OR MORE PARKING SPACES, 50 PERCENT OF TOTAL TREES AND SHRUBS REQUIRED MUST BE PLANTED IN ISLANDS OR MEDIANS LOCATED WITHIN THE PARKING LOT.

10' TYPE "B" BUFFER YARD

- BUFFER ADJACENT TO RESIDENTIAL USES (PINS 9568580820, 9568581873, 9568582843, 9568582758 & 9568583783)


4 BROADLEAF CANOPY TREES, 25 EVERGREEN SHRUBS AND 33 FLOWERING SHRUBS PER 100 LINEAR FEET.

- TOTAL LENGTH: 731 LF
- TOTAL REQUIRED CANOPY TREES: 30
- EXISTING TREE CREDITS: 9
- (24" BLACK WALNUT AND 26" HARDWOOD)
- TOTAL PROPOSED CANOPY TREES: 21
- TOTAL PROVIDED CANOPY TREE/CREDITS: 30
- TOTAL REQUIRED/PROPOSED EVERGREEN SHRUBS: 183/183
- TOTAL REQUIRED/PROPOSED FLOWERING SHRUBS: 242/242

NO LANDSCAPING SHALL BE WITHIN THE SIGHT TRIANGLES.

PROPERTY OWNERS:	1	SIXTH AVENUE LLC 14 MCDOWELL STREET ASHEVILLE, NC 28801
	2	REGIONAL PROPERTIES A NC GENERAL PARTNERSHIP 14 MCDOWELL STREET ASHEVILLE, NC 28801
	3	CASTLES AND COTTAGES, LLC 265 ROANKE RD FLETCHER, NC 28732
PARCEL #:		9568583734, 956884911, 9568582974, 9568581916, 9568489996 & 9568489860
DEED BOOK & PAGE:		3108/643, 1221/642, 816/168, & 1691/331
TOTAL SITE ACREAGE:		±1.68 AC (±73,030 SF)
CURRENT ZONING:		MC
PROPOSED ZONING:		UR
EXISTING USE:		VACANT/BUILDINGS
PROPOSED USE:		MULTI-FAMILY HOUSING (SENIOR)
PROPOSED UNITS:		52 UNITS
PROPOSED DENSITY:		30.95 DU/AC
PROPOSED BUILDING HEIGHT:		45'-9" (GRADE-COPING FOR FLAT ROOF)
FRONT SETBACK:		14' (FROM EX/PROP BACK OF CURB)
SIDE YARD:		5'
REAR YARD:		10'
REQUIRED PARKING:		52
- 1.0 SPACE PER UNIT (ELDERLY MULTIFAMILY DWELLING)		
PROPOSED PARKING:		56
OPEN SPACE/FOOTPRINT REQUIRED		
- PROPOSED FOOTPRINT:		±15,600 SF
- GROSS FLOOR AREA (EXCLUDING GAZEBO)		±55,500 SF
- REQUIRED MINIMUM OPEN SPACE:		30% (21,909 SF)
- PROPOSED OPEN SPACE:		30% (21,909 SF)
- PROPOSED ASPHALT AREA:		±25,600 SF
- PROPOSED SIDEWALK AREA:		±3,060 SF
- TOTAL PROPOSED BUILT UPON AREA:		±44,460 SF
- REQUIRED MINIMUM COMMON OPEN SPACE:		7,303 SF
(10% OF TOTAL SITE)		
- PROPOSED COMMON OPEN SPACE:		7,303 SF
(HATCHED AREA INDICATED COMMON OPEN SPACE)		
EXISTING/FORMER IMPERVIOUS COVERAGE		
- EXISTING BUILDINGS AREA:		±12,900 SF
- EXISTING ASPHALT AREA:		±24,600 SF
- EXISTING GRAVEL AREA:		±12,200 SF
- TOTAL EXISTING BUILT UPON AREA:		±49,700 SF

DEVELOPMENT SUMMARY



Mc²
ENGINEERING

MC² ENGINEERING, INC.
2110 BEN CRAIG DR., STE. 400
CHARLOTTE, NC 28262
PHONE 704.510.9797

PROPOSED DEVELOPMENT:
HAWKINS POINTE
6TH AVENUE
HENDERSONVILLE, NC

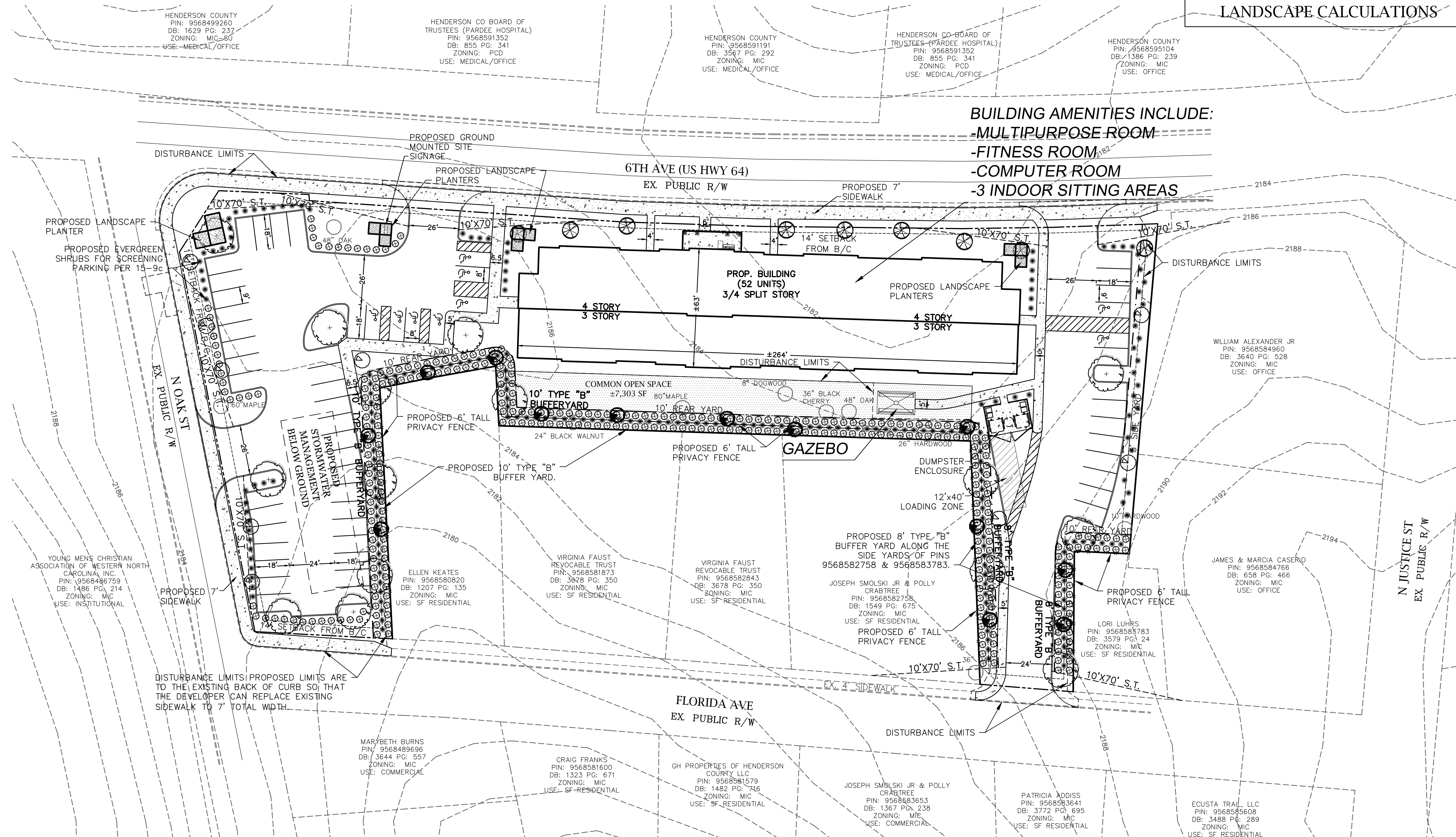
DEVELOPED BY:
**WODA COOPER
DEVELOPMENT, INC**
500 SOUTH FRONT STREET, 10th FLOOR
COLUMBUS, OH 43215

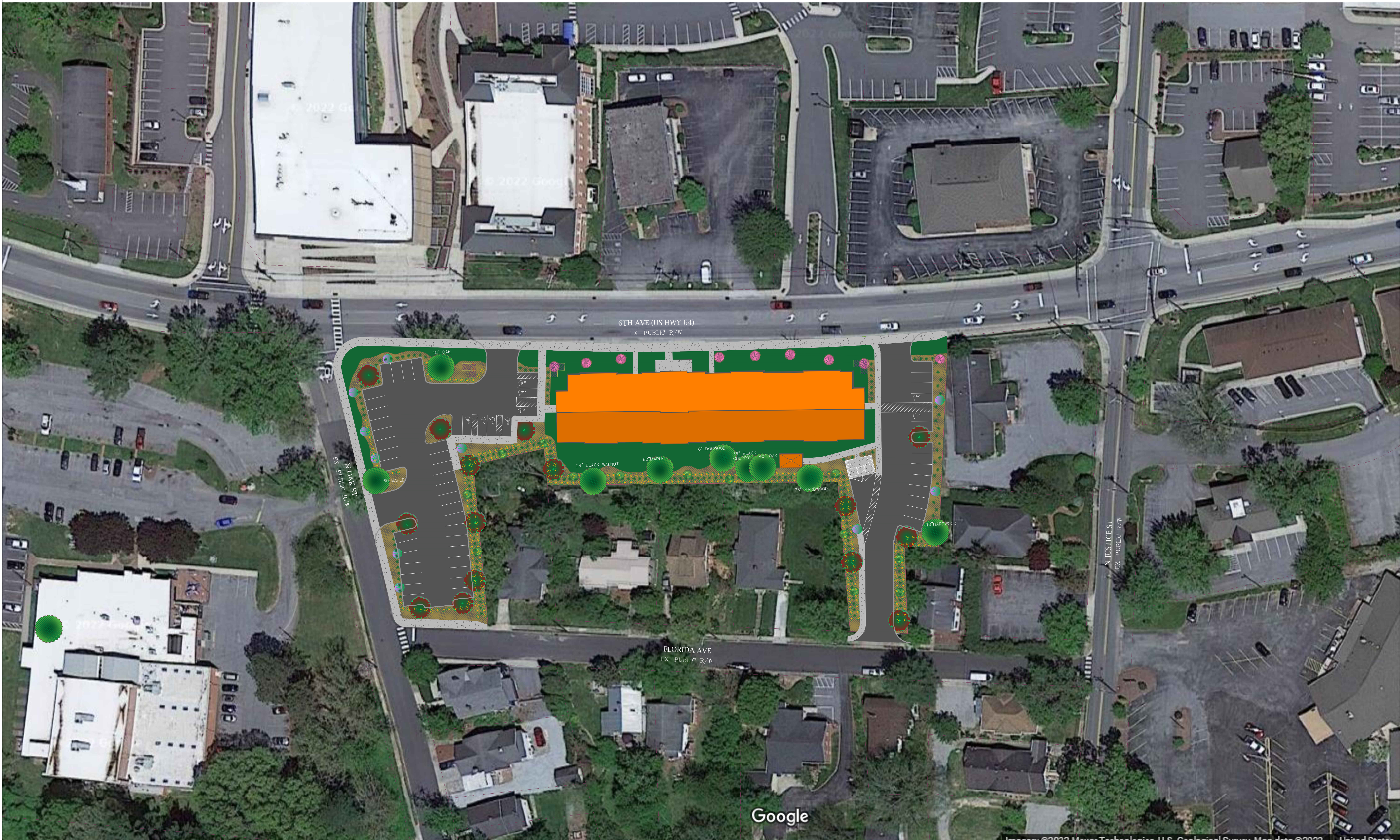
REZONING SITE PLAN

REVISIONS		
1	3/4/22	REVISED GAZEBO/BLDG/PARKING
2	3/10/22	HENDERSONVILLE COMMENTS
3	3/21/22	HENDERSONVILLE COMMENTS
4	3/28/22	HENDERSONVILLE COMMENTS
4	3/30/22	HENDERSONVILLE COMMENTS

CAD FILE: 22-004 BASE.DWG
PROJECT NO.: 22-004
DESIGNED BY: JDM
DATE: JANUARY 14, 2022

RZ1.0





Mc²
ENGINEERING

Mc² ENGINEERING, INC.
2110 BEN CRAIG DR., STE. 400
CHARLOTTE, NC 28262
PHONE 704.510.9797

PROPOSED DEVELOPMENT:
HAWKINS POINTE
6TH AVENUE
HENDERSONVILLE, NC

DEVELOPED BY:
**WODA COOPER
DEVELOPMENT, INC**
500 SOUTH FRONT STREET, 10th FLOOR
COLUMBUS, OH 43215

**RENDERED
SITE PLAN**

REVISIONS		
1	3/4/22	REVISED GAZEBO/BLDG/PARKING
2	3/10/22	HENDERSONVILLE COMMENTS
3	3/21/22	HENDERSONVILLE COMMENTS

CAD FILE: 22-004 BASE.DWG
PROJECT NO.: 22-004
DESIGNED BY: JDM
DATE: JANUARY 14, 2022

RZ5.0



REAR ELEVATION



LEFT ELEVATION



RIGHT ELEVATION



FRONT ELEVATION

Hawkins Pointe
Hendersonville, North Carolina



NEIGHBORHOOD COMPATIBILITY MEETING REPORT

HAWKINS POINTE (P22-16-CZD)

NCM Meeting Dates: February 28, 2022

PETITION REQUEST: Rezoning: Urban Residential - Conditional Zoning District (UR)

APPLICANT/PETITIONER: Woda Cooper Development, INC (Clay Cooper)

NEIGHBORHOOD COMPATIBILITY MEETING SUMMARY:

A Neighborhood Compatibility Meeting was held for this project on February 28, 2022 at 2pm in the City Operations Building at 305 Williams St and via Zoom. The meeting lasted approximately 1.5 hours.

There were 11 members of the public in attendance in-person with 2 others attending virtually. Additionally, in attendance were the applicants, 3 members of City staff and 2 Planning Board members.

Staff gave the formal introduction and a brief overview of the request.

There were 4 pre-submitted comments which are available upon request to City Staff. Three of these pre-submitted comments were read at the meeting with the author of the 4th pre-submitted opting to read her comments directly to the developer.

Following the pre-submitted comments read by staff, the development team was then allowed to present their Low-Income Tax Credit Housing project for Ages 55+.

Concerns and questions from the public related to impacts to historic character, noise, stormwater runoff, upholding existing zoning, privacy, buffering, lighting, parking, density, enforcement of community rules, traffic congestion, landscaping/impact to existing trees, increased crime, impact to Airbnb listing, height of buildings, "fitting" with the existing neighborhood, negative online reviews of developer, etc.

Full minutes from the Neighborhood Compatibility Meeting and pre-submitted public comments are available for review by request.



TREE BOARD RECOMMENDATION
HAWKINS POINTE (P22-16-CZD)
MARCH 15, 2022

PETITION REQUEST: Rezoning: Urban Residential - Conditional Zoning District (UR)

APPLICANT/PETITIONER: Woda Cooper (Clay Cooper)

TREE BOARD ACTION SUMMARY:

Rezoning: Conditional Zoning District – Hawkins Pointe (P22-16-CZD) – *Matthew Manley, AICP – Planning Manager*

The developer presented to the Tree Board at a regular meeting on March 15, 2022. The following Tree Board members were present: Mac Brackett, Mark Madsen, Glenn Lange, Pat Christie, Andy Crawford, and Council Member Debbie Roundtree. Members absent were Mary Davis and Landon Justice. The following recommendations were made:

SUMMARY

There are a total of 16 trees on this site. Eight are planned for removal. The Tree Board and Staff discussed shifting things around to attempt to save two large mature trees.

MOTION

Based on the following guiding city code documents (the Municipal Code, Chapter 46, Article IV, Division I, Trees & Shrubs, Section 46, 116 & 117; the Zoning Code, Article XV Buffering, Screening & Landscaping Sections 15-1, A & C and 15-4 A; the Subdivision Ordinance, Purpose and Intent, Section 1.04, Part H; and the Comprehensive Plan, Vision Statement and Section 3.3, Goal NR-2, Strategy 2.3) and the City Council's adoption (Feb., 2021) of core values and beliefs as guiding principles as they apply to protection of natural resources and the prioritization of existing tree canopy, the Tree Board recommends the following development conditions be placed on this property:

1. All preserved trees must be protected from construction activities as prescribed in the zoning code 15-4.c). regardless of use as tree credits.
2. All preserved trees must have the English Ivy removed from the trunks and limbs.
3. All private land trees that are adjacent to this project are required to have the construction barrier protection as prescribed in the zoning code 15-4.c).
4. Preserve and protect the 48-inch Oak and 60-inch Maple near the northwest corner of the property.

BOARD ACTION

Motion: Lange

Yeas: All

Nays: None

Recused: None

PLANNING BOARD RECOMMENDATIONProject #: P22-16-CZDMay 5, 2022

PETITION REQUEST: Conditional Rezoning – Hawkins Pointe

APPLICANT/PETITIONER: Dr. Leon Elliston (Regional Properties ANC General Partnership) and Nicholas J. Iosue (Castles and Cottages LLC) [Owners]

David Cooper Jr, Woda Cooper Companies, Inc. {Applicant/Developer}

PLANNING BOARD ACTION SUMMARY:

Staff gave a presentation on the request and reviewed the guidance from the Comprehensive Plan as well as the criteria for considering a rezoning. Planning Board considered this item for 1 hour and 45 minutes. The main topics discussed by the Planning Board members related to impact on adjoining properties, parking and traffic circulation.

The following members of the development team were present and provided information related to the proposed apartment complex: Clay Cooper, applicant/developer and Jeff McCluskey, engineer for the project.

The development team discussed how the proposed development is satisfying goals of the Comprehensive Plan and that the project has the top score for those competing for the Low-Income Housing Tax Credit in Western NC. The developer compared the intensity of uses permitted by right under the current MIC zoning and pointed out, for comparison, large scale neighboring structures in proximity of the site. Mr. Cooper also discussed the fact that they have reduced the scale of their original proposal which was for a 4-story, 60 unit complex. The changes made to the site along with concessions made by the developer were based on feedback from residents.

Two members of the public spoke in opposition to the development:

- Ken Fitch of Patton Street discussed the project's impact on neighbors, incompatibility with the neighborhood, the impacts to the 6th Ave corridor, inadequate parking, and the need for affordable housing.
- Ginny Faust of Florida Ave spoke at length about her concerns with the development. She provided a presentation running approximately 15 minutes and she spoke on behalf of five other residents that were in attendance. She made several points that are summarized as follows:
 - o The requirement for Urban Residential projects to be oriented around significant open space (parks/plazas) not being met.
 - o Comp Plan Goal PH-I.4 is not being met – which calls for high intensity redevelopment along major corridors in order to reduce traffic on local residential streets.
 - o No sidewalks provided for 16 parking spaces in south end of lot
 - o Urban Institutional is not a permitted Future Land Use for Urban Res.
 - o Compatibility concerns with the West Side Historic District due to

impacts to privacy, impacts to vistas, and proposed scale of the building.

- Additional concerns related to the proposed parking layout / issues with assigned parking spaces vs unassigned parking spaces.
- The precedent of using the Urban Residential zoning district.

Planning Board members expressed concerns related to height of the building not fitting into the neighborhood, if age 55+ is appropriate for this area, if the proposed project is too large given the size of the site, parking demand and configuration, and the need for affordable housing and stormwater control measures.

The Planning Board voted 7-1 to recommend **DENIAL** of this petition and adopted the following statements:

COMPREHENSIVE PLAN CONSISTENCY AND REASONABLENESS STATEMENT:

The petition is found to be consistent with the City of Hendersonville 2030 Comprehensive Plan based on the information from the staff analysis and the public hearing, and because:

The Urban Institutional designation calls for Multi-Family Residential as a secondary recommended land use and compliments the surrounding primary recommended land uses (public & institutional uses and offices) and the proposed location and site plan aligns with a majority of development guidelines listed under LU 11.4/12.4.

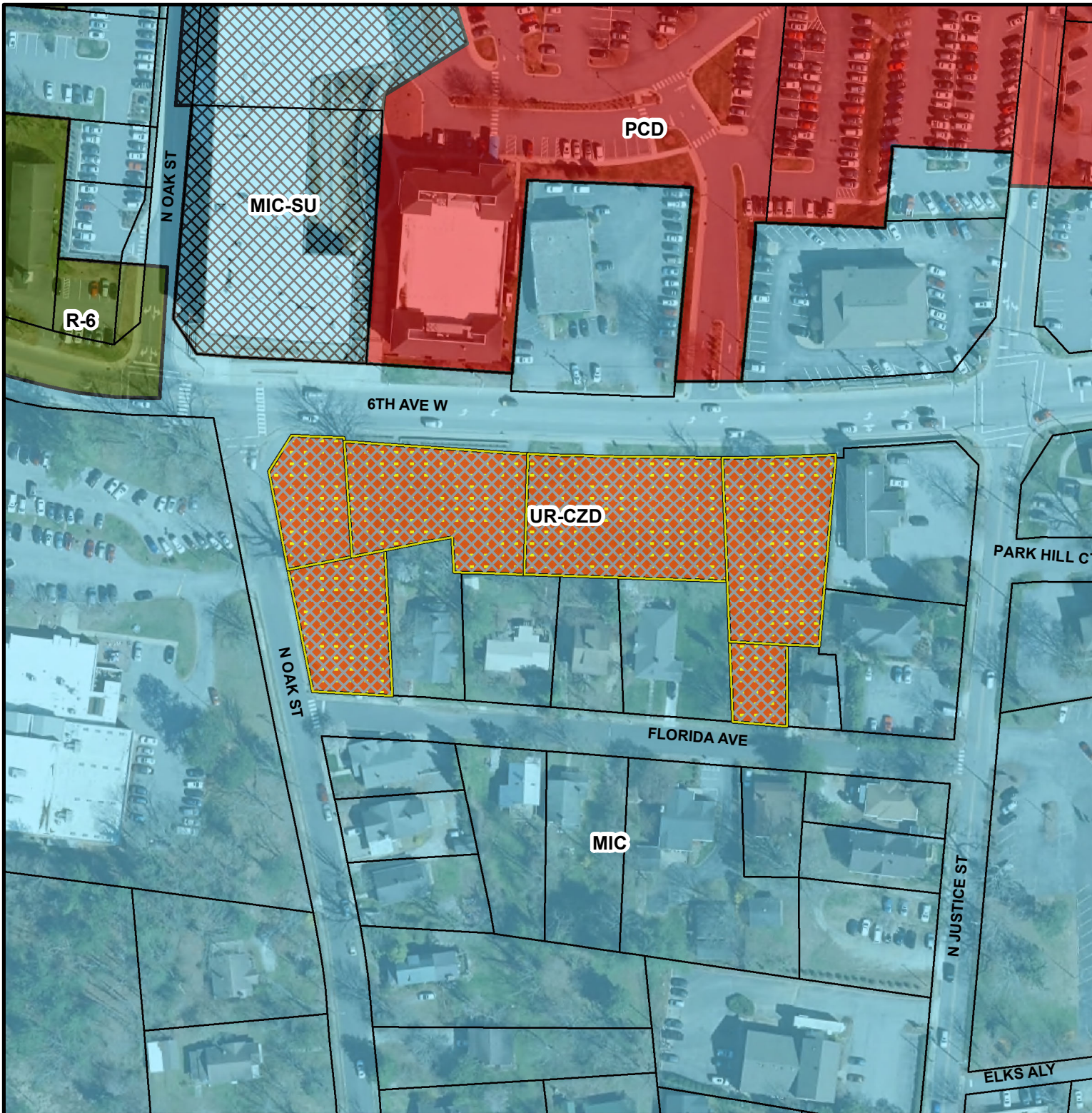
We do not find this petition to be reasonable and in the public interest based on the information from the staff analysis and the public hearing, and because:

[Rationale for Denial]






1. The petition proposes a building mass that is out of scale with the abutting single-family homes to the south of the site.
2. The petition is partially located in a National Register Historic District and proposes a design and site size which is out of character with abutting properties and the West Side Historic District.
3. Other permitted uses in the MIC zoning district which contain a residential component have additional limitations which would not permit the scale or density of the proposed project – limitations on # of bedrooms/acre, minimum lot size, etc.
4. The Urban Residential Zoning District requires that only parcels designated as Medium Intensity Neighborhood, High Intensity Neighborhood, Neighborhood Activity Center, Regional Activity Center and Business Center shall be considered for Urban Residential.
5. Because of the lack of community green space available and
6. The lack of a 10-year stormwater retention requirement.

BOARD ACTION

- **Motion/Second:** Barbara Cromar / Neil Brown
- **Yeas:** Hanley, Peacock, Brown, Robertson, Nace, Jones, Glassman
- **Nays:** Robertson
- **Absent:** Jon Blatt
- **Recused:** N/A



Hawkins Pointe
P22-16-CZD
PINs: 9568-48-9860, -9996,
9568-58-1916, -2974,
-4911, -3734
Acreage: 1.68
Proposed Zoning
Community Development Department

-  Subject Property (Urban Residential CZD)
- Hendersonville Zoning**
-  R-6 High Density Residential
 -  MIC Medical, Institutional, Cultural
 -  MIC-SU Medical, Institutional, Cultural, Special Use
 -  PCD Planned Commercial Development





**CITY OF HENDERSONVILLE
COMMUNITY DEVELOPMENT DEPARTMENT**

100 N. King Street, Hendersonville, NC 28792

Phone (828) 697-3010|Fax (828) 698-6185

www.hendersonvillenc.gov

**Conditional Zoning District Petition
Section 7-4 and Article 11 City Zoning Ordinance**

The following are the **required** submittals for a complete application for rezoning a property or properties to a Conditional Zoning District. Staff will not review applications until each item has been submitted and determined complete. By placing a check mark by each of the following items, you are certifying that you have performed that task.

- ☒ 1. Scheduled Pre-Application meeting with Planning Staff
 - 1a. Completed Neighborhood Compatibility Meeting – Contact Staff & Review CZD Checklist for additional information
- ☒ 2. Water and Sewer Availability Request
- ☒ 3. Completed Application Form
- ☒ 4. Completed Signature Page (completed Owner's Affidavit if different from applicant)
- ☒ 5. Completed Site Plan as described in Section 7-4.3-1 of the City Zoning Ordinance
- ☒ 6. Detailed explanation of any Proposed Development Description
- ☒ 7. Application Fee

Note: Additional Approvals prior to the issuance of a Zoning Compliance Permit may include, but are not limited to the following:

- **Henderson County Sedimentation & Erosion Permit**
- **Stormwater Management Plan**
- **Utility Approval**
- **NCDOT Permit**
- **Any other applicable permits as determined by the Community Development**

[Application Continued on Next Page]

Office Use:

Date Received: _____ **By:** _____ **Fee Received? Y/N**

A. Applicant Contact Information

David Cooper Jr.

* Printed Applicant Name

Woda Cooper Companies, Inc.

Printed Company Name (if applicable)

☒ Corporation

☐ Limited Liability Company

☐ Trust

☐ Partnership

☐ Other: _____



Applicant Signature

President

Applicant Title (if applicable)

500 S. Front Street, 10th Floor

Address of Applicant

Columbus, OH 43215

City, State, and Zip Code

614.396.3200

Telephone

dcooper@wodagroup.com

Email

* 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.

[Application Continued on Next Page]

B. Property Owner Contact Information (if different from Applicant)

Dr. Leon Elliston

*Printed Owner Name

Sixth Avenue LLC

Printed Company Name (if applicable)

☐ Corporation

☒ Limited Liability Company

☐ Trust

☐ Partnership

☐ Other: _____

Leon Elliston

dotloop verified
02/14/22 1:27 PM EST
K1WS-ZPNT-V4W4-N9AY

Property Owner Signature

Property Owner Title (if applicable)

14 McDowell Street, Asheville, NC 28801

City, State, and Zip Code

828-273-2472

Telephone

elliston_1@hotmail.com

Email

* Property owner hereby grants permission to the City of Hendersonville personnel to enter the subject property for any purpose required in processing this application.

* If signed by an agent on behalf of the Owner, this petition MUST be accompanied by a Limited Power of Attorney signed by the property owner (s) and notarized, specifically authorizing the agent to act on the owner (s) behalf in signing this application. Failure of each owner, or their duly authorized agent, to sign, or failure to include the authority of the agent signed by the property owner, will result in an INVALID APPLICATION.

Note: Additional Owner Signature pages attached.

C. Property Information

Name of Project: Hawkins Pointe

PIN(s): 9568583734; 9568584911; 9568582974; 9568489996; and 9568489860

Address(es) / Location of Property: 714, 728, 738, 746 Sixth Ave West, Hendersonville, NC
and 745 Florida Avenue, Hendersonville, NC

Type of Development: X Residential Commercial Other

Current Zoning: MIC

Total Acreage: 1.66

Proposed Zoning: UR - Urban Residential

Proposed Building Square Footage: 63,360

Number of Dwelling Units: 60

List of Requested Uses: Age restricted (55+), 60 unit apartment building.

D. Proposed Development Conditions for the Site

In the spaces provided below, please provide a description of the Proposed Development for the site.

Hawkins Pointe is a 60 unit, age restricted (55+), development that will consist of only 1 and 2 bedroom units. The property will be affordable to seniors making up to 80% of the area median income.

Hawkins Pointe will have 44 1-bedroom units and 16 2-bedroom units. The development will have a laundry room, mail and package area, leasing office, indoor sitting common areas, a multipurpose room with a kitchen, a gazebo, a covered patio with seating, a computer room, and an exercise room.

The building will not exceed 4 stories in height.

Additional Property Owners: (Signature indicates intent that this page be affixed to Application.)

Dr. Leon Elliston

*Printed Owner Name

Regional Properties ANC General Partnership

Printed Company Name (if applicable)

☐ Corporation ☐ Limited Liability Company ☐ Trust ☒ Partnership

☐ Other:

Leon Elliston

dotloop verified
02/14/22 1:27 PM EST
Ri9C-JK6O-P09H-D5QX

Property Owner Signature

Property Owner Title (if applicable)

14 McDowell Street, Asheville, NC 28801

City, State, and Zip Code

828-273-2484

Telephone

elliston_1@hotmail.com

Email

* Property owner hereby grants permission to the City of Hendersonville personnel to enter the subject property for any purpose required in processing this application.

* If signed by an agent on behalf of the Owner, this petition MUST be accompanied by a Limited Power of Attorney signed by the property owner (s) and notarized, specifically authorizing the agent to act on the owner (s) behalf in signing this application. Failure of each owner, or their duly authorized agent, to sign, or failure to include the authority of the agent signed by the property owner, will result in an INVALID APPLICATION.

Nicholas J Iosue

*Printed Owner Name

Castles and Cottages LLC

Printed Company Name (if applicable)

☐ Corporation

☒ Limited Liability Company

☐ Trust

☐ Partnership

☐ Other: _____

Nicholas J Iosue

Property Owner Signature

Member

Property Owner Title (if applicable)

265 Roanoke Rd., Fletcher, NC 28732

City, State, and Zip Code

828-545-7577

Telephone

nickiosue9@gmail.com

Email

* Property owner hereby grants permission to the City of Hendersonville personnel to enter the subject property for any purpose required in processing this application.

* If signed by an agent on behalf of the Owner, this petition MUST be accompanied by a Limited Power of Attorney signed by the property owner (s) and notarized, specifically authorizing the agent to act on the owner (s) behalf in signing this application. Failure of each owner, or their duly authorized agent, to sign, or failure to include the authority of the agent signed by the property owner, will result in an INVALID APPLICATION.



CITY OF HENDERSONVILLE

AGENDA ITEM SUMMARY

PLANNING DIVISION

SUBMITTER:	Tyler Morrow	MEETING DATE:	May 5 th , 2022
AGENDA SECTION:	PUBLIC HEARING	DEPARTMENT:	Community Development
TITLE OF ITEM:	Rezoning: Conditional Zoning District –White Pine Villas (P22-13-CZD) – Tyler Morrow – Planner II		

SUGGESTED MOTION(S):

For 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 (PINs: 9670-70-6498, 9670-70-8607 and 9670-70-8864) from PRD-CZD (Planned Residential Development – Conditional Zoning District) to PRD-CZD (Planned Residential Development – Conditional Zoning District) based on the site plan submitted by the applicant, [dated revision 4-19-22,] and presented at this meeting and subject to the following:

1. The development shall be consistent with the site plan, including the list of permitted uses and applicable conditions as presented on the site plan.

[for amendments to uses or conditions discussed and agreed upon in the Council meeting and not yet represented on site plan submitted by the applicant please use the following language, disregard if not needed]

2. Permitted uses and applicable conditions presented on the site plan shall be amended to include:

[list any additional permitted uses or conditions]

3. The petition is found to be [consistent] with the City of Hendersonville 2030 Comprehensive Plan based on the information from the staff analysis and because:

1. Neighborhood Activity Center designates multi-family residential as a secondary recommended land use. The addition of more multi-family in this area further diversifies the mix of uses present while retaining Neighborhood retail sales and services as the prominent use within this Future Land Use category's boundaries.

For Denial:

I move City Council deny an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of the subject property (PINs: 9670-70-6498, 9670-70-8607 and 9670-70-8864) from PRD-CZD (Planned Residential Development – Conditional Zoning District) to PRD-CZD (Planned Residential Development – Conditional Zoning District) based on the site plan submitted by the applicant

The petition is found to be [consistent] with the City of Hendersonville 2030 Comprehensive Plan based on the information from the staff analysis and because:

1. Neighborhood Activity Center designates multi-family residential as a secondary recommended land use. The addition of more multi-family in this area further diversifies the mix of uses present while retaining Neighborhood retail sales and services as the prominent use within this Future Land Use category's boundaries.

We do not find this petition to be reasonable and in the public interest based on the information from the staff analysis and the public hearing, and because:

1. The development does not meet the requirements for a height limit exemption in accordance with section 5-14-6.5 of the zoning ordinance because (please state your reasons).

[DISCUSS & VOTE]

4. We find this petition to be reasonable and in the public interest based on the information from the staff analysis and the public hearing, and because:

1. The current underlying zoning on the subject property permits the requested density.
2. This development will provide senior multi-family within walking distance (+/-0.15 miles) of Miracle-Ear Hearing Aid Center, Blue Ridge Health and Ingles/Ingles Pharmacy.
3. The project is proposed to be 100% affordable (at 80% AMI or below).
4. The subject property is identified as a priority infill area

[DISCUSS & VOTE]

SUMMARY: *The City of Hendersonville is in receipt of an application for a Conditional Zoning District from Dennis Tharrington and Stephen Drake of WDT Development, LLC. The applicants are requesting to rezone the subject properties identified as PINs 9670-70-6498, 9670-70-8607 and 9670-70-8864 and located at 2620 Chimney Rock Road. from PRD CZD, Planned Residential Development Conditional Zoning District to PRD CZD, Planned Residential Development Conditional Zoning District for the construction of a four-story, 88,500 sq. ft. apartment building with 78 units on approximately 4.64 acres.*

The underlying zoning on the site currently permits a 78-unit apartment building with a height of 34' 11" to the midpoint of the roof.

The developer is proposing a 78-unit 55+ senior living apartment building with a height of 50' at the midpoint of the roof.

The request for increased height, reconfiguration of the vehicular use area, and the reduction in building footprint are the main deviations from the previously approved site plan.

PROJECT/PETITIONER NUMBER:	P22-13-CZD
PETITIONER NAME:	<ul style="list-style-type: none"> • Stephen Drake and Dennis Tharrington, WDT Development LLC [Applicants] • Beth Ann Laws Russell, Angela L. Jones, and Regina G Veach [Owner 9670-70-6498] • Jeffery Donaldson and Jennifer McCarson [Owner PIN: 9670-70-8607] • Jeffrey and Donna Donaldson [Owner PIN: 9670-70-8864]
ATTACHMENTS:	<ol style="list-style-type: none"> 1. Staff Report 2. Draft Ordinance 3. Proposed Zoning Map 4. Neighborhood Compatibility Meeting Summary 5. Tree Board Summary 6. Planning Board Summary 7. Proposed Site Plan 8. Application 9. Certificate of Mailing

Ordinance #____-____

AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND THE OFFICIAL ZONING MAP OF THE CITY OF HENDERSONVILLE FOR PARCELS POSSESSING PARCEL IDENTIFICATION NUMBERS 9670-70-6498, 9670-70-8607 AND 9670-70-8864 BY CHANGING THE ZONING DESIGNATION FROM PRD-CZD (PLANNED RESIDENTIAL DEVELOPMENT– CONDITIONAL ZONING DISTRICT TO PRD-CZD (PLANNED RESIDENTIAL DEVELOPMENT– CONDITIONAL ZONING DISTRICT)

IN RE: Parcel Numbers: 9670-70-6498, 9670-70-8607 and 9670-70-8864– 2620 Chimney Rock Road (White Pine Villas) - (File # P22-13-CZD)

WHEREAS, the City is in receipt of a Conditional Rezoning application from Dennis Tharrington, WDT Development LLC for the development of 78 affordable senior living (55+) multi-family units on approximately 4.64 acres, and

WHEREAS, the Planning Board took up this application at its regular meeting on April 11th, 2022; voting 7-1 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 May 5th, 2022, 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: 9670-70-6498, 9670-70-8607 and 9670-70-8864 from PRD-CZD (Planned Residential Development – Conditional Zoning District) to PRD-CZD (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 based on the site plan submitted by the applicant and subject to the following.
 - a. Permitted uses shall include:
 - i. Residential Dwellings, Multi-Family
 - b. Conditions that shall be satisfied prior to final site plan approval include:
 - i. Developer shall be granted a height limitation exemption in accordance with section 5-14-6.5 of the Zoning Ordinance. The height limitation exemption shall be for a structure measuring 50' to the midpoint of a gable, hip or gambrel roof.
 - ii. Developer shall be granted a density bonus in accordance with 5-14-5 of the Zoning Ordinance. The density bonus shall allow a density of 16.8 units per acre.
 - iii. All preserved trees must be protected from construction activities as prescribed in the zoning code 15-4-C regardless of use as tree credits.

- iv. An additional 25 large and medium canopy trees, 2 ½” or larger caliper, beyond those shown as preserved (10) on the site plan reviewed by the Tree Board, must be planted throughout the site.
 - v. Implement a vegetative planting plan that will enhance the banks of and a 20-foot corridor around the stormwater pond to provide filtration and infiltration of stormwater from turf managed areas and enhance wildlife habitat. The plan must include diverse and appropriate species of native upland shrubs and perennial herbaceous plants (including warm season grasses, sedges, and plants important to pollinators) selected from the city’s Recommended Landscape Species List for Street Trees and Land Development Projects.
3. This ordinance shall not be effective until the stipulated list of use(s) and conditions, established herein, is consented to in writing by the applicant and all owners of the subject property. Upon such written consent, this ordinance shall be effective retroactive to the date of its adoption.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 5th day of May, 2022.

Attest:

Barbara G. Volk, Mayor, City of Hendersonville

Angela L. Reece, City Clerk

Approved as to form:

Angela S. Beeker, City Attorney

IN RE: Parcel Numbers: 9670-70-6498, 9670-70-8607 and 9670-70-8864– 2620 Chimney Rock Road
(White Pine Villas) - (File # P22-13-CZD)

With their signatures below, the undersigned applicant(s) and property owner(s) consent to and agree to the imposition of all conditions stated. (page 1 of 2)

Applicant/Developer: Dennis Tharrington,
WDT Development LLC.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Property Owner PIN 9670-70-6498: Beth Ann
Laws Russell

Signature: _____

Printed Name: _____

Date: _____

Property Owner 9670-70-6498: Regina G.
Veach

Signature: _____

Printed Name: _____

Date: _____

Property Owner PIN 9670-70-6498: Angela L.
Jones

Signature: _____

Printed Name: _____

Date: _____

IN RE: Parcel Numbers: 9670-70-6498, 9670-70-8607 and 9670-70-8864– 2620 Chimney Rock Road
(White Pine Villas) - (File # P22-13-CZD)

With their signatures below, the undersigned applicant(s) and property owner(s) consent to and agree
to the imposition of all conditions stated. (page 2 of 2)

Property Owner PIN 9670-70-8607: Jeffery
Donaldson

Signature:_____

Printed Name:_____

Date:_____

Property Owner PIN 9670-70-8607: Jennifer
McCarson

Signature:_____

Printed Name:_____

Date:_____

Property Owner PIN 9670-70-8864: Donna
Donaldson

Signature:_____

Printed Name:_____

Date:_____

Property Owner PIN 9670-70-8864: Jeffrey
Donaldson

Signature:_____

Printed Name:_____

Date:_____

REZONING: CONDITIONAL REZONING- WHITE PINE VILLAS (P22-13-CZD)
CITY OF HENDERSONVILLE - COMMUNITY DEVELOPMENT STAFF REPORT

PROJECT SUMMARY 2

EXISTING ZONING & LAND USE..... 3

SITE IMAGES..... 4

SITE IMAGES..... 5

SITE IMAGES..... 6

REZONING HISTORY 7

FUTURE LAND USE 8

REZONING ANALYSIS – COMPREHENSIVE PLAN CONSISTENCY (ARTICLE 11-4) 9

REZONING ANALYSIS – COMPREHENSIVE PLAN CONSISTENCY (ARTICLE 11-4) 10

REZONING ANALYSIS – GENERAL REZONING STANDARDS (ARTICLE 11-4) 11

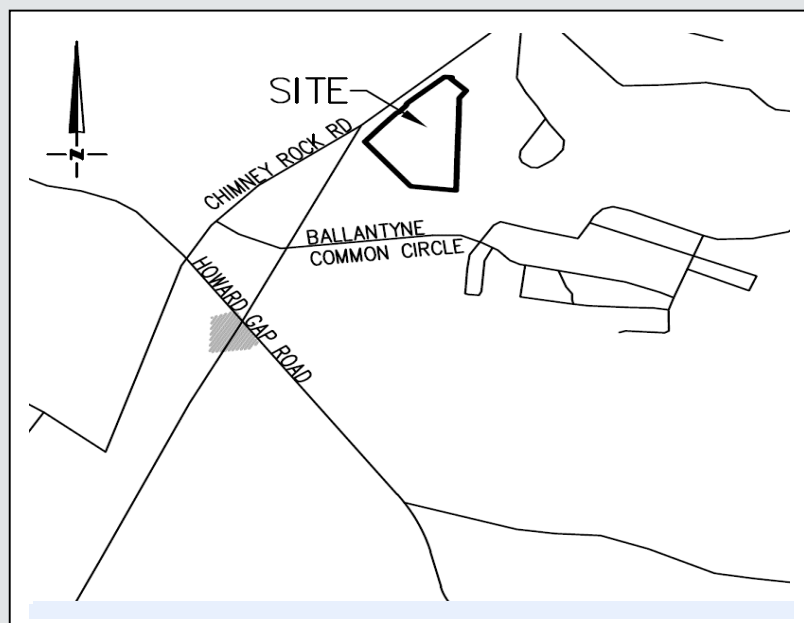
DRAFT COMPREHENSIVE PLAN CONSISTENCY AND REZONING REASONABLENESS STATEMENT 12

STAFF SITE PLAN REVIEW – SUMMARY COMMENTS 13



PROJECT SUMMARY

- Project Name & Case #:
 - White Pine Villas
 - P22-13-CZD
- Applicant & Property Owner:
 - Dennis Tharrington and Stephen Drake, WDT Development LLC. [Applicants]
 - Beth Ann Laws Russell, Angela L. Jones, and Regina G Veach [Owner 9670-70-6498]
 - Jeffery Donaldson and Jennifer McCarson [Owner PIN: 9670-70-8607]
 - Jeffrey and Donna Donaldson [Owner PIN: 9670-70-8864]
- Property Address:
 - 2620 Chimney Rock Road
- Project Acreage:
 - 4.64 Acres
- Parcel Identification (PINs):
 - 9670-70-6498
 - 9670-70-8607
 - 9670-70-8864
- Current Parcel Zoning:
 - Planned Residential Development Conditional Zoning District (PRD-CZD)
- Future Land Use Designation:
 - Neighborhood Activity Center
- Requested Zoning:
 - Planned Residential Development Conditional Zoning District (PRD-CZD)
- Requested Uses:
 - Residential dwelling, multi-family
- Neighborhood Compatibility Meeting:
 - February 18th, 2022



SITE VICINITY MAP

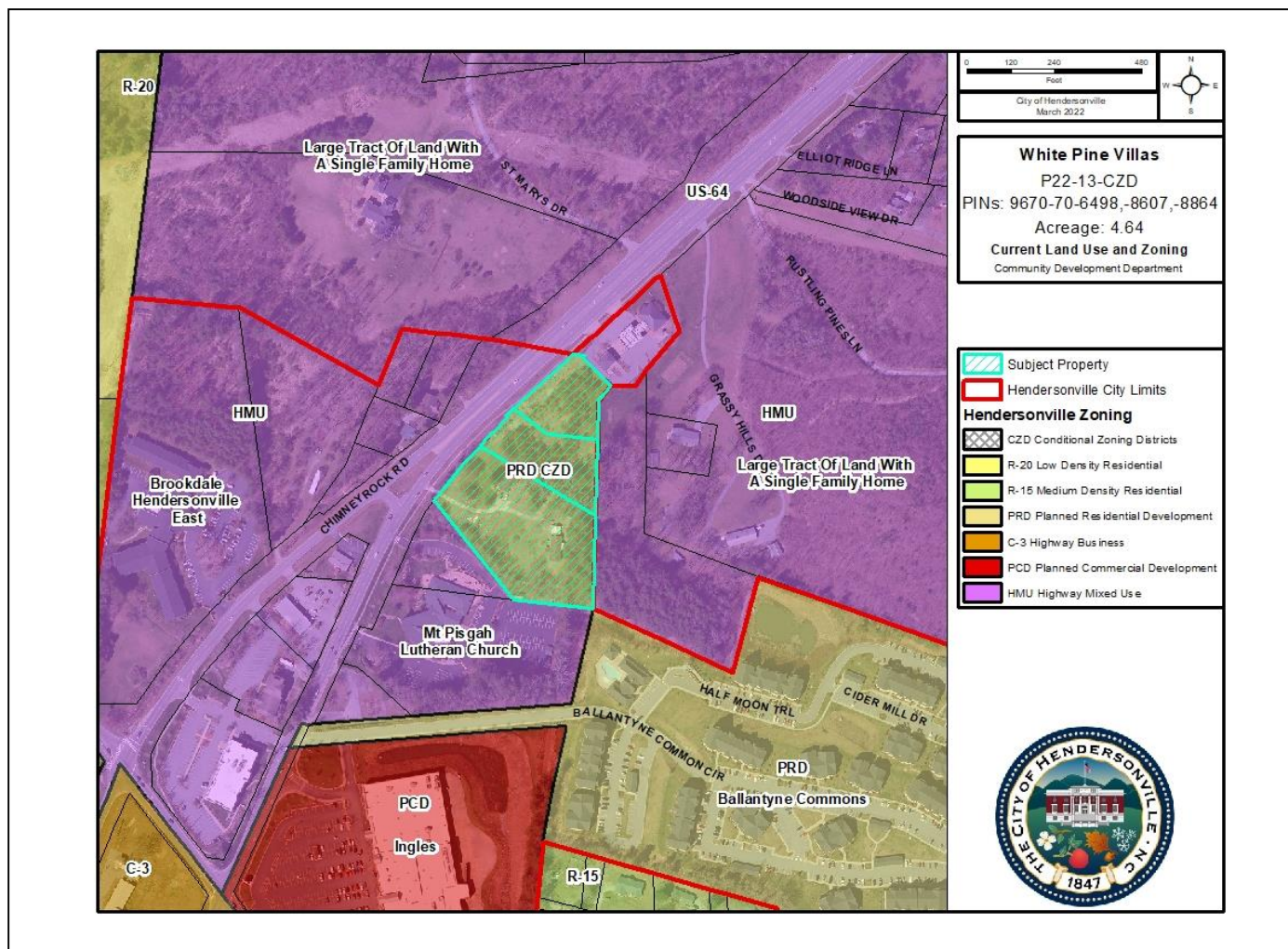
The City of Hendersonville is in receipt of an application for a Conditional Zoning District from Dennis Tharrington and Stephen Drake of WDT Development, LLC. The applicants are requesting to rezone the subject properties identified as PINs 9670-70-6498, 9670-70-8607 and 9670-70-8864 and located at 2620 Chimney Rock Road. from PRD CZD, Planned Residential Development Conditional Zoning District to PRD CZD, Planned Residential Development Conditional Zoning District for the construction of a four-story, 88,500 sq. ft. apartment building with 78 units on approximately 4.64 acres.

The underlying zoning on the site currently permits a 78-unit apartment building with a height of 34' 11" to the midpoint of the roof.

The developer is proposing a 78-unit 55+ senior living apartment building with a height of 50' to the midpoint of the roof.

The request for increased height, reconfiguration of the vehicular use area, and the reduction in building footprint are the main deviations from the previously approved site plan.

EXISTING ZONING & LAND USE



City of Hendersonville Current Zoning & Land Use Map

The subject property is currently zoned PRD-CZD, Planned Residential Development Conditional Zoning District.

The parcel is surrounded by HMU, Highway Mixed Use zoning. Some of the uses present in this area are a religious institution, laundry mat, senior living multi-family and single family homes on large tracts of land that could be redeveloped.

The subject property shares a property boundary with the Ballantyne Commons Apartments. Ballantyne Commons is a multi-family development of 360 units on 29 acres that is also zoned PRD, Planned Residential Development.

Other districts that are in the general area of the subject property are Planned Commercial Development (Ingles), C-3 Highway Business, R-15 Medium Density Residential and R-20 Low Density Residential.

SITE IMAGES



View of the blueline stream and existing sidewalk looking north.



View from the northern tip of the property looking south.

SITE IMAGES



View of large mature trees near the 2 residences on site.



Interior view of the property looking eastward.

SITE IMAGES



Interior view of the parcel looking southward.



*View from the existing sidewalk on Chimney Rock Road
looking eastward.*

REZONING HISTORY

Prior Rezoning	Summary of Prior Petition	Status
April 2 nd , 2020 (P20-07-CZD) Rezoned from Highway Mixed Use to Planned Residential Development Conditional Zoning District.	The rezoning was tied to a Low-Income Tax Credit Application. The request was for a 78-unit 3-story 55+ multi-family building on approximately 4.64 acres. The project did not receive tax credits.	Preliminary Site plan was approved by City Council-Final site plan was never submitted to staff.

Minutes from the City Council meeting:
<https://mccmeetings.blob.core.usgovcloudapi.net/hvlnc-pubu/MEET-Minutes-4ab50b18954346f49ac79b2f04368be2.pdf>

White Pine Villas

Building- 78 units. 16.81 Units per acre.

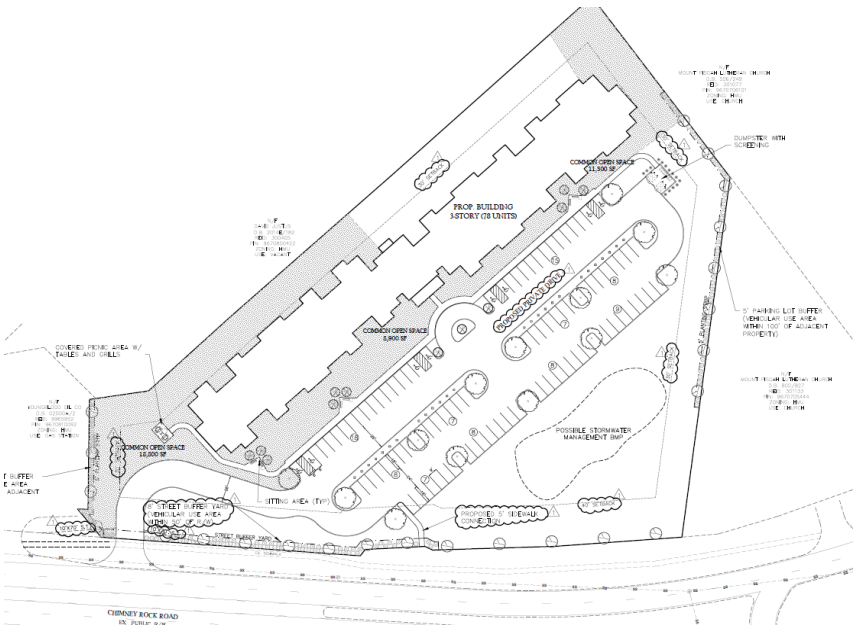
- One 3-story multi-family building.
- 31,900 SF footprint
- 34' 11" to the midpoint of the roof
- 95 Parking Spaces (8 handicap accessible)

Conditions of Approval:

- Complete petition for annexation submitted to the City of Hendersonville.

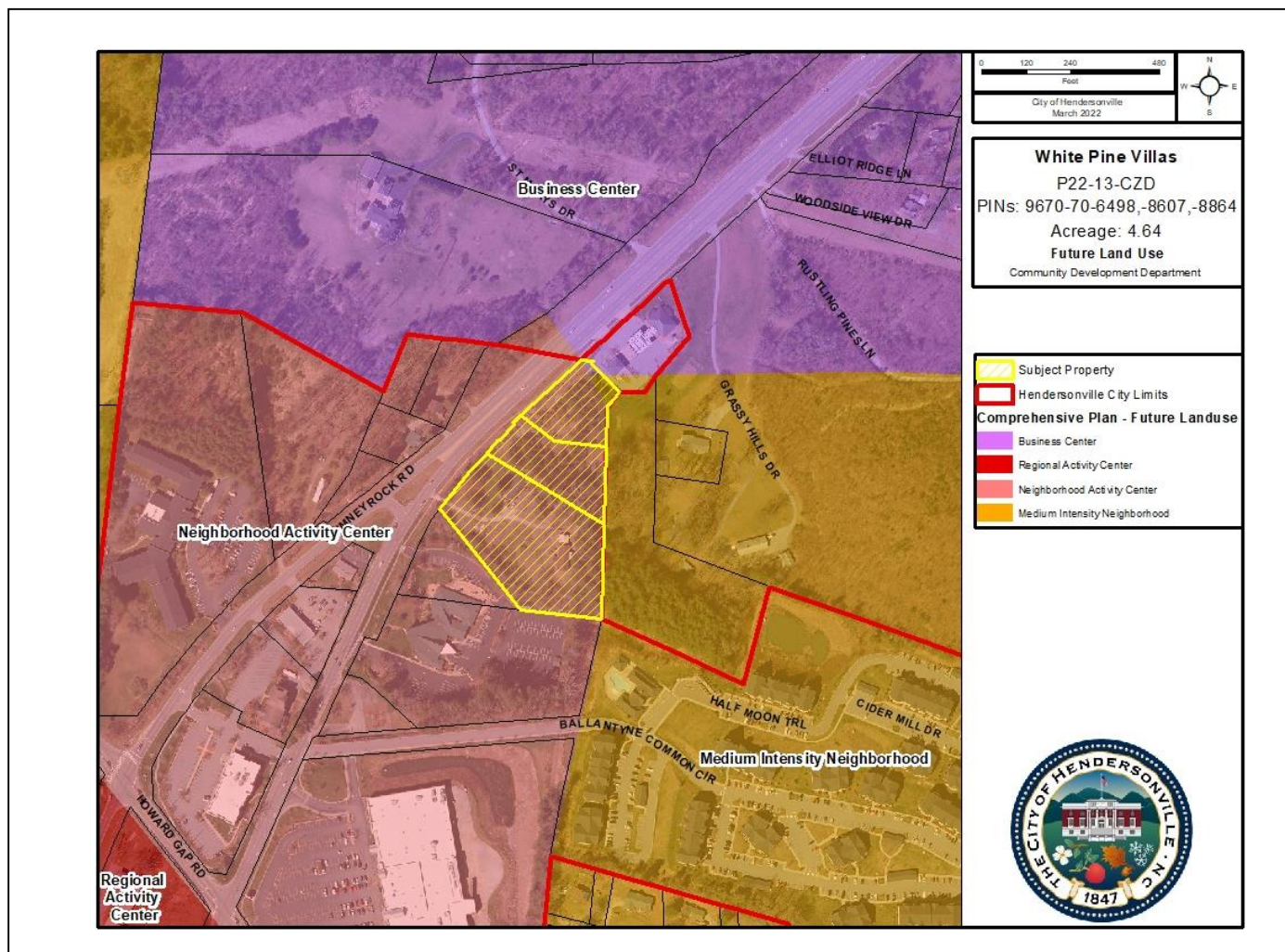
Uses:

Residential dwellings, multi-family



PROPOSED UNITS:	78 UNITS
- 36 (1) BR UNITS	
- 42 (2) BR UNITS	
PROPOSED DENSITY:	16.8 DU/AC
PROPOSED BUILDING HEIGHT:	34'-11" (GRADE - MIDPOINT OF ROOF)
REQUIRED PARKING:	117
- 1.5 SPACES PER 1-2 BEDROOM UNITS	
- 2 SPACES PER 3+ BEDROOMS UNITS	
REQUIRED PARKING (REDUCED):	94
- REQUESTING 20% REDUCTION IN ENTRY CORRIDOR	
PROPOSED ON-SITE PARKING:	95
- HANDICAP PARKING:	8 (4 VAN ACCESSIBLE)
FRONT SETBACK:	40'
SIDE YARD:	30'
REAR YARD:	30'
OPEN SPACE/FOOTPRINT REQUIRED	
- MAXIMUM ALLOWABLE FOOTPRINT:	40,000 SF
- PROPOSED FOOTPRINT:	±31,900 SF
- REQUIRED MINIMUM OPEN SPACE:	60% (121,271 SF)
- PROPOSED OPEN SPACE:	60% (121,271 SF)
- PROPOSED ASPHALT AREA:	±49,000 SF
- PROPOSED SIDEWALK AREA:	±4,400 SF
- REQUIRED MINIMUM COMMON OPEN SPACE:	39,000 SF
(500 SF PER UNIT WITH 78 UNITS TOTAL)	
- PROPOSED COMMON OPEN SPACE:	39,000 SF
(HATCHED AREA INDICATED COMMON OPEN SPACE)	

FUTURE LAND USE



City of Hendersonville Future Land Use Map

The site is designated as Neighborhood Activity Center.

Parcels to the south and southwest are also designated as Neighborhood Activity Center. This area represents a node of Neighborhood Activity Center at the US 64 and Howard Gap intersection. This area has a wide range of nonresidential uses and lends itself to possible future redevelopment.

Parcels to the north are designated as Business Center. This area has a lot of large vacant lots that could be redeveloped into a campus like environment.

Parcels to the east are designated as Medium Intensity Neighborhood. This area is comprised of a couple of larger Planned Residential Developments (Ballantyne Commons and Half Moon Heights) as well as some single-family homes on large lots that could be redeveloped in the future for denser residential uses.

REZONING ANALYSIS – COMPREHENSIVE PLAN CONSISTENCY (ARTICLE 11-4)

COMPREHENSIVE PLAN CONSISTENCY	
Future Land Use	Goal LU-8. Neighborhood Activity Center: <i>“Concentrate retail in dense, walkable, mixed-use nodes located at major intersections in order to promote a sense of community and a range of services that enhance the value of Hendersonville’s neighborhoods.” [CONSISTENT]</i>
	Strategy LU-8.1. Locations: <ul style="list-style-type: none"> Emerging neighborhood activity center at US-64 and Howard Gap Road.
	Strategy LU-8.2. Primary recommended land uses: <ul style="list-style-type: none"> Neighborhood retail sales and services [INCONSISTENT]
	Strategy LU-7.3. Secondary recommended land uses: <ul style="list-style-type: none"> Multi-family residential [CONSISTENT] Pedestrian amenities (plazas, outdoor seating, etc.) [CONSISTENT]
	Strategy LU-8.4. Development guidelines: <ul style="list-style-type: none"> Minimal parking in front of buildings (no more than one to two rows) along thoroughfares, with remainder of parking located to the side or rear [CONSISTENT] Encouragement of buildings that are designed at a human scale, maximizing window coverage on ground floors and utilizing façade articulation [INCONSISTENT, ELEVATIONS ARE NOT A REQUIREMENT OF PRD] Provision of pedestrian connections to parking and other buildings/ properties [CONSISTENT]
Land Use & Development	The property is designated as a “ Priority Infill Area ” on the Growth Management Map (Map 8.3a). “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”. [CONSISTENT]
	A portion of the project area is identified as a “ Development Opportunity ” in the Comprehensive Plan’s Map 8.2b: Development Framework. This includes vacant land, agricultural land, and single-family residential properties greater than five acres. [CONSISTENT]

REZONING ANALYSIS – COMPREHENSIVE PLAN CONSISTENCY (ARTICLE 11-4)

COMPREHENSIVE PLAN CONSISTENCY	
Population & Housing	<ul style="list-style-type: none"> • Strategy PH-1.1.1. Promote compatible infill development. • Action PH-1.1.2. Implement zoning map and/or text amendments as needed in the Priority Infill Areas identified on the Growth Management Map in Chapter 8 • Action PH-1.5.6. Promote the installation of street trees through private redevelopment projects and targeted installations in locations such as “park streets” identified in Strategy CF-7.1 in Chapter 5.
	<ul style="list-style-type: none"> • 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 PH-2.2. Encourage provision of affordable housing units in new developments. • 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.
	<ul style="list-style-type: none"> • Strategy PH-3.2. Encourage mixed land use patterns that place residents within walking distance of services
Natural & Environmental Resources	<ul style="list-style-type: none"> • Goal NR-1. Preserve environmentally sensitive areas in order to protect life and property from natural hazards, protect water resources, and preserve natural habitat • Strategy NR-1.2. Protect land adjacent to streams in order to protect water quality, reduce erosion, and protect wildlife habitat. • Action NR-1.2.2 Continue to enforce and improve upon the City’s Stream Buffer Protection Standards
	<ul style="list-style-type: none"> • Strategy NR-2.3. Promote preservation of woodlands. • Action NR-2.3.2 Continue to allow the Tree Board to review and provide recommendations for tree preservation for Special Use Permit projects
	<ul style="list-style-type: none"> • Strategy NR-3.2. Enable and encourage Low-Impact Development practices in stormwater management.
Cultural & Historic Resources	<ul style="list-style-type: none"> • N/A- No Goals, Strategies or Actions are directly applicable to this project.
Community Facilities	<ul style="list-style-type: none"> • Strategy CF-6.1. Encourage community open-space or play areas in new or redeveloped residential neighborhoods.
Water Resources	<ul style="list-style-type: none"> • Strategy WR-2.2. Prevent development of floodplains and stream corridors in order to preserve natural drainage patterns and improve the quality of stormwater runoff • Strategy WR-2.3. Enable and encourage Low-Impact Development practices in stormwater management.
Transportation & Circulation	<ul style="list-style-type: none"> • Strategy TC-3.4. Improve roadways as needed to implement the land use vision and meet level-of-service requirements, as illustrated on Map 7.3a (Includes this section of Chimney Rock Road)

REZONING ANALYSIS – GENERAL REZONING STANDARDS (ARTICLE 11-4)

GENERAL REZONING STANDARDS	
Compatibility	Is the proposed rezoning compatible or incompatible with surrounding uses?
	The underlying conditional zoning district permits 78 multi-family units. Senior living multi-family is present in this area across US 64 at Brookdale Hendersonville East. Brookdale Hendersonville East was constructed in 1988 and operates as an independent living community. Unit count/density is unknown for this development. Ballantyne Commons to the rear of this property is an age unrestricted multi-family development. It is a 29-acre development with 360 dwelling units and a density of 12 units per acre. Per the site plan for the Ballantyne develop, the max building height is 36'.
Changed Conditions	Highlight any changed conditions, on surrounding property, etc. that suggest a rezoning is appropriate.
	The underlying zoning on the subject property permits senior living 55+ multifamily and 16.81 units per acre. The project is required to go through the conditional zoning district review because the applicant is requesting a height limitation exemption from City Council. The previously approved height was 34' 11".
Public Interest	Are there public interests or benefits that would be derived for the greater population from the rezoning?
	According to the latest census data 26% of Henderson County is 65+. This development will provide additional affordable housing options for this age group. The 2030 comprehensive plan notes that Hendersonville continues to see a large number of retirees make the city their home.
Public Facilities	Are there public facilities that can support the proposed rezoning, water, wastewater, fire and police, schools, and transportation?
	The development will be served by City of Hendersonville water and sewer service. Chimney Rock Road is designated as a boulevard on the comprehensive transportation plan and is maintained by NCDOT. Internal drive aisle will be privately maintained.
Effect on Natural Environment	Would the proposed amendment result in "significantly adverse impacts" on the natural environment?
	Site is mostly a greenfield, new development reflects a significant increase in impervious surfaces.
	The site currently has 62 trees 12" or greater DBH on site. The developer is proposing to remove approximately 52 trees and retain 10 trees 12" or greater DBH. The applicant is also proposing to plant 68 new trees.

The petition is found to be **consistent** with the City of Hendersonville 2030 Comprehensive Plan based on the information from the staff analysis and the public hearing, and because:

Neighborhood Activity Center designates multi-family residential as a secondary recommended land use. The addition of more multi-family in this area further diversifies the mix of uses present while retaining Neighborhood retail sales and services as the prominent use within this Future Land Use category's boundaries.

We **[find/do not find]** this petition to be reasonable and in the public interest based on the information from the staff analysis and the public hearing, and because:

DRAFT [Rationale for Approval]

- *The current underlying zoning on the subject property permits 78 multi-family units.*
- *This development will provide senior multi-family within walking distance (+-0.15 miles) of Miracle-Ear Hearing Aid Center, Blue Ridge Health and Ingles/Ingles Pharmacy.*
- *The project is proposed to be 100% affordable (at 80% AMI or below).*
- *The subject property is identified as a priority infill area.*

DRAFT [Rational for Denial]

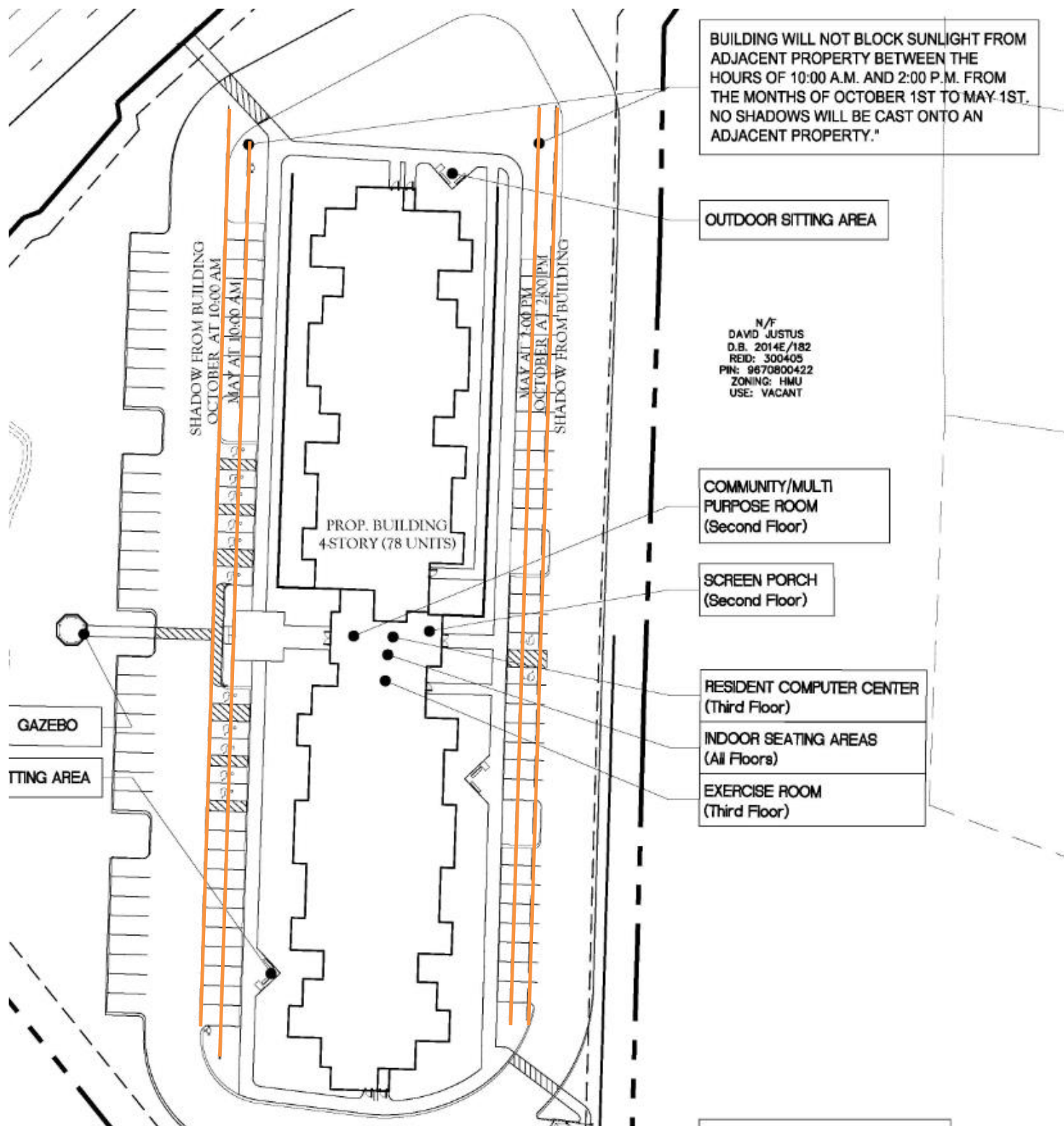
- *The development does not meet the requirements for a height limit exemption in accordance with section 5-14-6.5 of the zoning ordinance because (please state your reasons).*

STAFF SITE PLAN REVIEW – SUMMARY COMMENTS**PROPOSED REQUEST DETAILS**

- The site plan accompanying this petition contains the following provisions:
 - 78-Unit Adult 55+ Apartment Development on 4.64 Acres (Density = 16.81 Units/Acre)
 - 1 4-story building
 - 50' to the midpoint of the roof
 - 25,500 Sq. Ft. building footprint
 - 88,500 Sq. Ft. of Gross Floor Area
 - Bedroom units
 - 36 1-Bedroom Units
 - 42 2-Bedroom Units
 - Requested Uses: Residential, Multi-Family
- The developer is requesting a density bonus. City Council can grant a density bonus if the following standards are met.
 - The property on which the development is proposed to be situated shall be located in close proximity to a thoroughfare designated as such in the Comprehensive Transportation Plan;
 - Chimney Rock Road is designated as a boulevard on the Comprehensive Transportation Plan
 - Vehicular access for such development shall be limited to one or more boulevards or thoroughfares designated as such in the Comprehensive Transportation Plan;
 - Chimney Rock Road is designated as a boulevard on the Comprehensive Transportation Plan
 - The carrying capacity of the roadway shall be adequate to handle increased traffic associated with the development without reducing the level of service of such roadway;
 - NCDOT stated “we do not foresee this senior adult housing development causing any significant degradation in the LOS of US 64 Chimney Rock Road and the number of trips generated are nominal”
 - The development is proposed to be located within reasonable walking distance of places of employment and/or shopping facilities and shall provide pedestrian amenities in order to foster pedestrian access to such facilities;
 - Sidewalks are existing at the front of the property. The sidewalk leads to Ingles/Ingles pharmacy. The developer is showing a connection to this sidewalk.
 - The development shall provide common open space sufficient for the needs of its residents, which shall not be less than the greater of the

common open space required by Section 6-16-2, below, or 1% of the land area of the development for each dwelling unit per acre proposed.

- The developer is providing 19.3% of the development as common open space.
- Any density authorized by City Council pursuant to this section shall not exceed 18 dwelling units per acre.
 - The developer is proposing a density of 16.81 units per acre.
- The developer is requesting a height limitation exemption. City Council can grant a height limitation exemption if the following standards are met.
 - Such building will not block sunlight from adjacent property between the hours of 10:00 a.m. and 2:00 p.m. from the months of October 1st to May 1st.
 - (See Sun Study Below, Page 15)
 - Such building is adequately designed and served from the standpoint of safety, and the City Fire Chief certifies that the fire safety equipment to be installed is adequately designed and that the building is reasonably well located in relation to the fire stations and equipment so as to offer adequate protection to life and property. In no case shall the building exceed 50 feet in height.
 - Hendersonville Fire Department reviewed this project as a member of the Development Review Committee and had no comments concerning the height of the structure.
 - The developer is not proposing to exceed 50'.
 - The side and rear yards for any structure in excess of 35 feet in height shall be increased by one foot for each one foot in height in excess of 35 feet.
 - The site plan shows a 45' side and rear setback to meet this requirement.



- **Comparison between P20-07-CZD (approved) and P22-13-CZD (proposed)**

	P20-07-CZD	P22-13-CZD
Height	34' 11"	50'
Units	78	78
Use	Residential dwellings, multi-family	Residential dwellings, multi-family
Parking	95 spaces (8 ADA)	97 (13 ADA)
Building Footprint	31,900 SF	25,500
Common Open Space	39,000 SF	39,000 SF
Bedrooms	36 1-Bedroom Units 42 2-Bedroom Units	36 1-Bedroom Units 42 2-Bedroom Units

- **Developer Conditions:**
 - **Developer Proposed Concessions:**
 - Proposed development is a Low-Income Housing Tax Credit project with all 78 units at or below 80% AMI. Proposed Development will provide senior affordable housing as governed by North Carolina Housing Finance Agency requirements.
 - **Developer Proposed Conditions:**
 - The developer is requesting that a height limitation exemption be granted by City Council for this project in accordance with section 5-14-6.5 Building Height of the Zoning Ordinance.
 - The developer is requesting that a Density Bonus be granted by City Council for this project in accordance with section 5-14-5 Density Bonus of the Zoning Ordinance.

OUTSTANDING ISSUES & PROPOSED CONDITIONS:

COMMUNITY DEVELOPMENT

Site Plan Comments

- The site plan accompanying this petition meets the standards established by the Zoning Ordinance for Planned Residential Development (5-14) and Site Plan Review (7-3).

Proposed City-Initiated Conditions: None

CITY ENGINEER

Site Plan Comments: None

Proposed City-Initiated Conditions: None

FIRE MARSHAL

Site Plan Comments

- The location of the FDC may require an additional hydrant. Would not approve FDC connection at entrance with hot box as it would limit access from both directions.

Proposed City-Initiated Conditions: None

STORMWATER ADMINISTRATOR

Site Plan Comments: None

Proposed City-Initiated Conditions: None

FLOODPLAIN ADMINISTRATOR

Site Plan Comments: None

Proposed City-Initiated Conditions: None

PUBLIC WORKS DIRECTOR:

Site Plan Comments:

- Will they be cutting the sidewalk to install the driveway? if so, they will need an encroachment permit for the sidewalk cut?

Proposed City-Initiated Conditions: None

NCDOT

Site Plan Comments:

- We do not foresee this senior adult housing development causing any significant degradation in the LOS of US 64 Chimney Rock Road and the number of trips generated are nominal.
- The site has some concerns as far as sight distance and the speed of the vehicles coming from the west. This can be addressed during the driveway permit review.

Proposed City-Initiated Conditions: None

TRANSPORTATION CONSULTANT

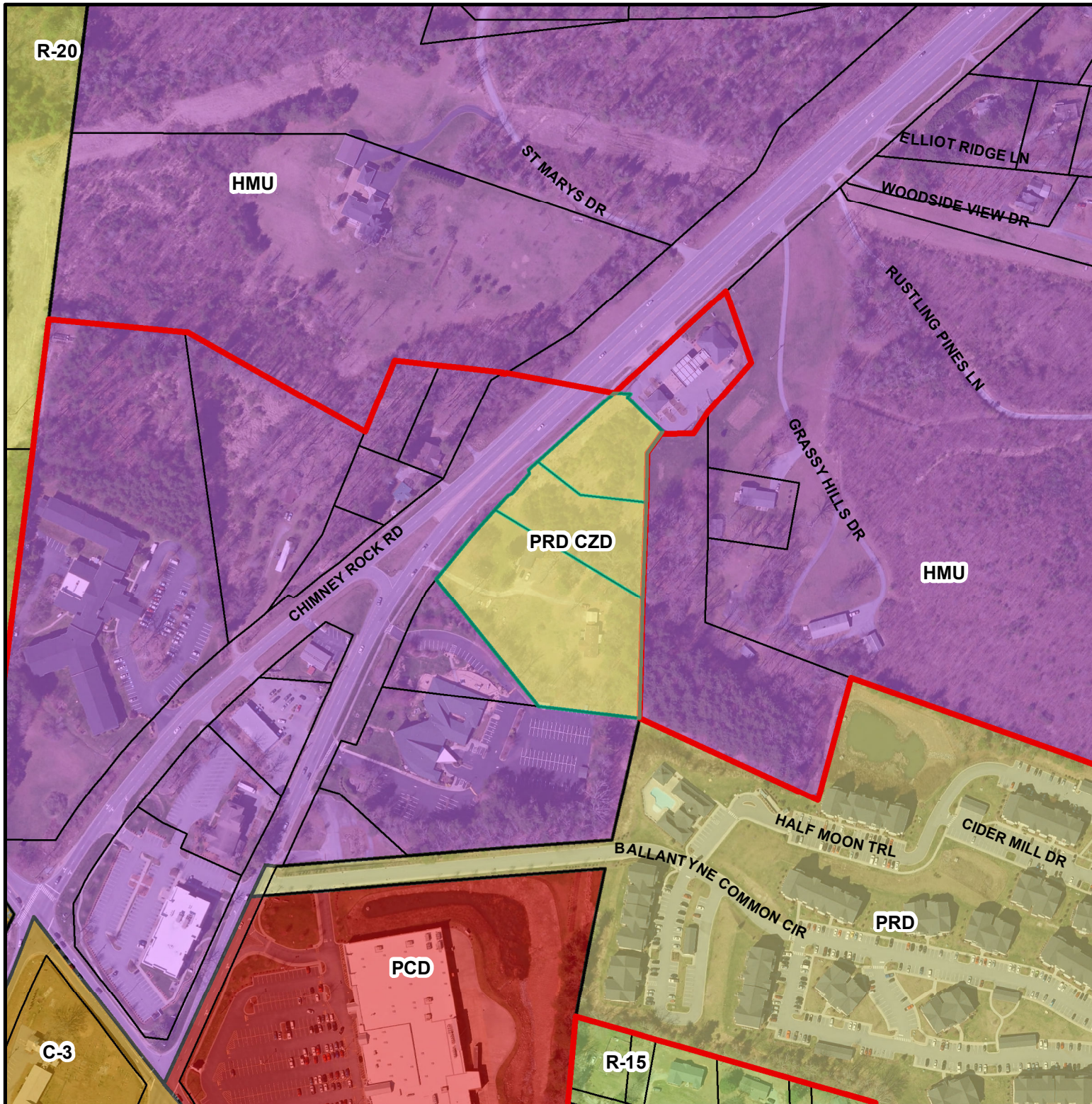
Site Plan Comments & Recommended Conditions: None

- Jonathan Guy with Kimley Horn did not review this project since a TIA was not triggered by the zoning ordinance and NCDOT did not relay any traffic concerns to the City.

TREE BOARD

Site Plan Comments & Recommended Conditions:

- See attached Tree Board Summary



White Pine Villas
P22-13-CZD
PINs: 9670-70-6498,-8607,-8864
Acreage: 4.64
Proposed Zoning
Community Development Department

- Hendersonville Zoning**
- Subject Property
 - Hendersonville City Limits
 - CZD Conditional Zoning Districts
 - R-20 Low Density Residential
 - R-15 Medium Density Residential
 - PRD Planned Residential Development
 - C-3 Highway Business
 - PCD Planned Commercial Development
 - HMU Highway Mixed Use





NEIGHBORHOOD COMPATIBILITY MEETING REPORT
WHITE PINE VILLAS (P22-13-CZD)
NCM MEETING DATE: FEBRUARY 18TH, 2022

PETITION REQUEST: Rezoning: Planned Residential Development Conditional Zoning District (PRD-CZD)

APPLICANT/PETITIONER: Stephen Drake and Dennis Tharrington of WDT Development, LLC

NEIGHBORHOOD COMPATIBILITY MEETING SUMMARY:

A Neighborhood Compatibility Meeting was held for this project on February 18th, 2022 at 2pm in the City Operations Building at 305 Williams St and via Zoom.

2 members of the public were in attendance in-person with 1 other attending virtually. Additionally, in attendance was 1 member from the applicant team and 3 members of City staff.

There was 1 pre-submitted comment.

A citizen asked a question about whether a TIA would be conducted for this project. The applicant stated that since the average age of the tenant is 70 and not typically working, this would reduce the amount of daily traffic, and that a TIA was not required. Questions were also raised about entrance requirements and parking.

A citizen raised concerns over stormwater run off from all the new impervious surfaces from this development. The applicant stated that the proposed development would have a sand filter basin/pond that will be adequate to handle a 25 year flood. There were also concerns raised about increased traffic on Chimney Rock Road as a result of this development.

Full minutes from the Neighborhood Compatibility Meeting and pre-submitted public comments are available for review by request.



TREE BOARD RECOMMENDATION
WHITE PINE VILLAS (P22-13-CZD)
Meeting Date: March 15th, 2022

PETITION REQUEST: Rezoning: Planned Residential Development Conditional Zoning District (PRD-CZD)

APPLICANT/PETITIONER: Stephen Drake and Dennis Tharrington of WDT Development, LLC

TREE BOARD ACTION SUMMARY:

Staff and the applicant presented to the Tree Board at their regular meeting on March 15th, 2022. The following Recommendation were made:

Based on the following guiding city code documents (the Municipal Code, Chapter 46, Article IV, Division I, Trees & Shrubs, Section 46, 116 & 117; the Zoning Code, Article XV Buffering, Screening & Landscaping Sections 15-1, A & C and 15-4 A; the Subdivision Ordinance, Purpose and Intent, Section 1.04, Part H; and the Comprehensive Plan, Vision Statement and Section 3.3, Goal NR-2, Strategy 2.3) and the City Council's adoption (Feb., 2021) of core values and beliefs as guiding principles as they apply to protection of natural resources and the prioritization of existing tree canopy, the Tree Board recommends the following developmental conditions be place on this project:

1. All preserved trees must be protected from construction activities as prescribed in the zoning code 15-4c regardless of use as tree credits. *[developer agreed]*
2. An additional 25 large and medium canopy trees, 2 ½" or larger caliper, beyond those shown as preserved (10) on the site plan reviewed by the Tree Board, must be planted throughout the site. *[developer agreed]*
3. Implement a vegetative planting plan that will enhance the banks of and a 20 foot corridor around the stormwater pond to provide filtration and infiltration of stormwater from turf managed areas and enhance wildlife habitat. The plan must include diverse and appropriate species of native upland and wetland shrubs and perennial herbaceous plants (including warm season grasses, sedges, and plants important to pollinators) selected from the city's Recommended Landscape Species List for Street Trees and Land Development Projects. No turf grasses can be used. *[developer did not agree]*
 - a. **Developer Proposed Counter:** Implement a vegetative planting plan that will enhance the banks of and a 20-foot corridor around the stormwater pond to provide filtration and infiltration of stormwater from turf managed areas and enhance wildlife habitat. The plan must include diverse and appropriate species of native upland shrubs and perennial herbaceous plants (including warm season grasses, sedges, and plants important to pollinators) selected from the city's Recommended Landscape Species List for Street Trees and Land Development Projects.

BOARD ACTION

Motion: Glenn Lange

Roll Call Vote:

- Yeas: Mac Brackett, Mark Madsen, Glenn Lange, Pat Christie, Andy Crawford.
- Nays: None
- Absent: Mary Davis and Landon Justice
- Recused: None



PLANNING BOARD RECOMMENDATION

WHITE PINE VILLAS (P22-13-CZD)

APRIL 11th, 2022

PETITION REQUEST: Rezoning: Planned Residential Development Conditional Zoning District (PRD-CZD)

APPLICANT/PETITIONER: Dennis Tharrington and Stephen Drake of WDT Development, LLC

PLANNING BOARD ACTION SUMMARY:

The Planning Board voted 7-1 to recommend **APPROVAL** of this petition and adopted the following motion:

PLANNING BOARD MOTION:

Ms. Peacock moved the Planning Board recommend the adoption of an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of the subject property (PINs 9670-70-6498, 9670-70-8607 and 9670-70-8864) from PRD CZD, Planned Residential Development Conditional Zoning District to PRD CZD, Planned Residential Development Conditional Zoning District based on the site plan submitted by the applicant, dated 3-31-22, and presented at their meeting and subject to the following:

1. The development shall be consistent with the site plan, including the list of permitted uses and applicable conditions as presented on the site plan.
2. The petition is found to be consistent with the City of Hendersonville 2030 Comprehensive Plan based on the information from the staff analysis and because:

Neighborhood Activity Center designates multi-family residential as a secondary recommended land use. The addition of more multi-family in this area further diversifies the mix of uses present while retaining Neighborhood retail sales and services as the prominent use within this Future Land Use category's boundaries.
3. We find this petition to be reasonable and in the public interest based on the information from the staff analysis and the public hearing, and because:
 1. The current underlying zoning on the subject property permits 78 multi-family units.
 2. This development will provide senior multi-family within walking distance (+0.15 miles) of Miracle-Ear Hearing Aid Center, Blue Ridge Health and Ingles/Ingles Pharmacy.
 3. The project is proposed to be 100% affordable (at 80% AMI or below).
 4. The subject property is identified as a priority infill area.

OVERVIEW OF DISCUSSION FROM MINUTES:

The Planning Board convened on the project for 50 minutes.

Stephen Drake, 195 Rockridge Road, Mills River stated he has done affordable housing for about 10 years now. The demand for affordable housing is great. They will provide seniors with quality affordable housing. White Pine Villas was approved two years ago as a PRD CZD. It will be for ages 55+. The biggest deviation is going from three stories to four stories. They are wanting to have full access around the building for fire access. The building will be sprinkled, and they will add a fire hydrant. Full access around the building is very important. This is a much better layout as they want to make a better product. This is a great area. It is walkable to Ingles and Blue Ridge Health. They are hoping to get the tax credit this year.

Ms. Cromar discussed the first plan and how the hose could not go all the way around the building. Mr. Drake stated with this change the 200-foot hose will be able to reach all areas of the building. Mr. Drake stated the size of the apartments basically stayed the same. Each apartment will have their own storage unit.

Mr. Glassman asked if they turn down the height would he still move forward. Mr. Drake stated he would not because he would be concerned about a violation with the Fire Code. If left with only three stories, there would be no fire access and that would be placing the seniors in jeopardy. They are only adding 10 feet to the height. The lot line drops down 15 feet and you will not see much of the building.

Ms. Cromar asked if he had considered reducing the number of units and still be able to allow for the circular parking. Mr. Drake stated there would be a problem with less units because they cannot operate in the red. Mr. Holloway stated a petition was approved for 78 units and that approval still exists today.

The site's zoning prior to the 2020 CZD was HMU which allows for four-story apartment buildings.

BOARD ACTION:**Motion:**

- Tamara Peacock

Second:

- Peter Hanley

Yeas:

- Jim Robertson, Chair, Neil Brown, Tamara Peacock, Frederick Nace, Peter Hanley, Hunter Jones, Stuart Glassman

Nays:

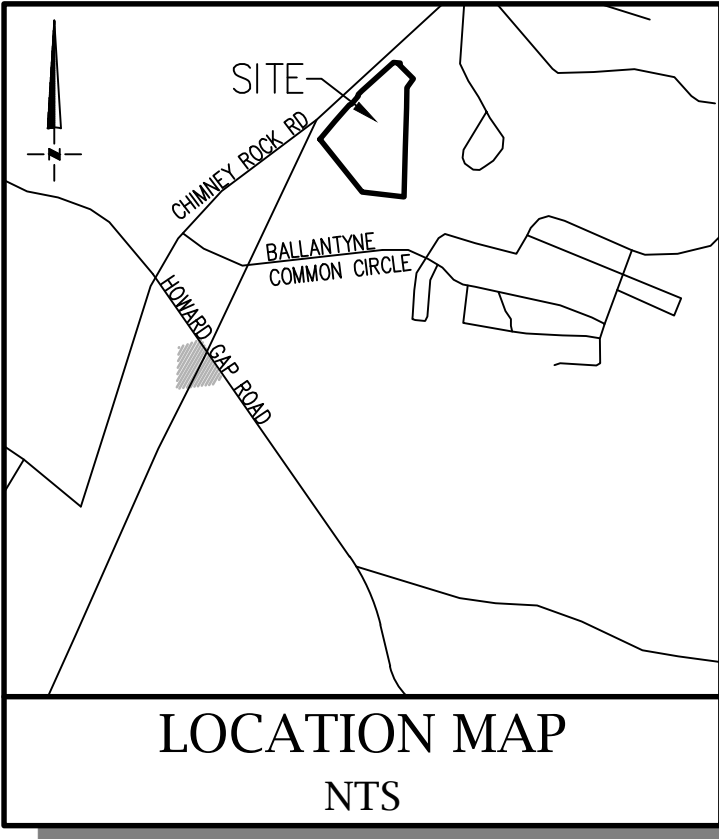
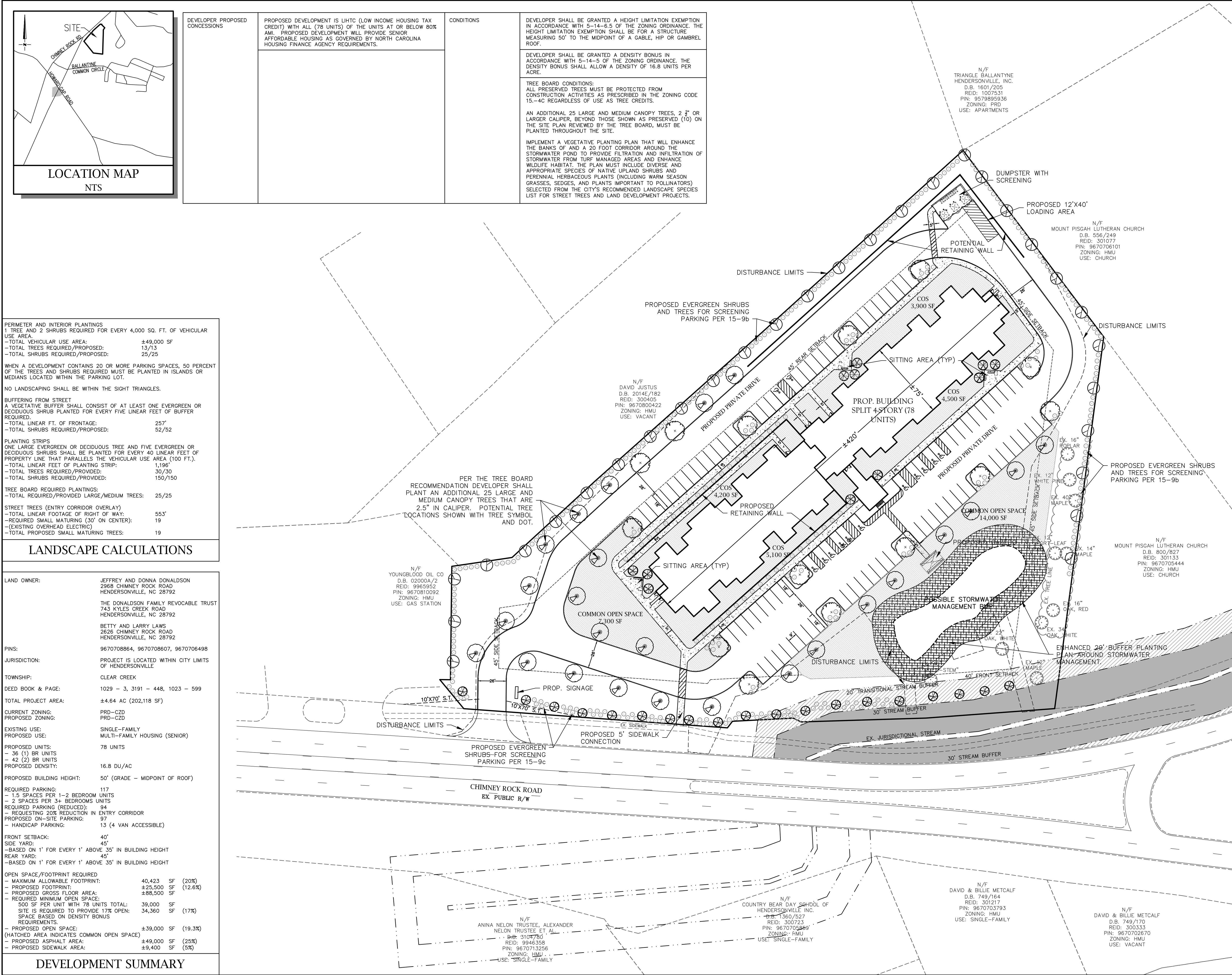
- Barbara Cromar

Absent:

- Jon Blatt (Vice-Chair)

Recused:

- None



PERIMETER AND INTERIOR PLANTINGS	
1 TREE AND 2 SHRUBS REQUIRED FOR EVERY 4,000 SQ. FT. OF VEHICULAR USE AREA.	
-TOTAL VEHICULAR USE AREA:	±49,000 SF
-TOTAL TREES REQUIRED/PROPOSED:	13/13
-TOTAL SHRUBS REQUIRED/PROPOSED:	25/25
WHEN A DEVELOPMENT CONTAINS 20 OR MORE PARKING SPACES, 50 PERCENT OF THE TREES AND SHRUBS REQUIRED MUST BE PLANTED IN ISLANDS OR MEDIANS LOCATED WITHIN THE PARKING LOT.	
NO LANDSCAPING SHALL BE WITHIN THE SIGHT TRIANGLES.	
BUFFERING FROM STREET	
A VEGETATIVE BUFFER SHALL CONSIST OF AT LEAST ONE EVERGREEN OR DECIDUOUS SHRUB PLANTED FOR EVERY FIVE LINEAR FEET OF BUFFER REQUIRED.	
-TOTAL LINEAR FT. OF FRONTAGE:	257'
-TOTAL SHRUBS REQUIRED/PROPOSED:	52/52
PLANTING STRIPS	
ONE LARGE EVERGREEN OR DECIDUOUS TREE AND FIVE EVERGREEN OR DECIDUOUS SHRUBS SHALL BE PLANTED FOR EVERY 40 LINEAR FEET OF PROPERTY LINE THAT PARALLELS THE VEHICULAR USE AREA (100 FT.).	
-TOTAL LINEAR FEET OF PLANTING STRIP:	1,196'
-TOTAL TREES REQUIRED/PROVIDED:	30/30
-TOTAL SHRUBS REQUIRED/PROVIDED:	150/150
TREE BOARD REQUIRED PLANTINGS:	
-TOTAL REQUIRED/PROVIDED LARGE/MEDIUM TREES:	25/25
STREET TREES (ENTRY CORRIDOR OVERLAY)	
-TOTAL LINEAR FOOTAGE OF RIGHT OF WAY:	553'
-REQUIRED SMALL MATURING (30' ON CENTER):	19
-EXISTING OVERHEAD ELECTRIC	
-TOTAL PROPOSED SMALL MATURING TREES:	19

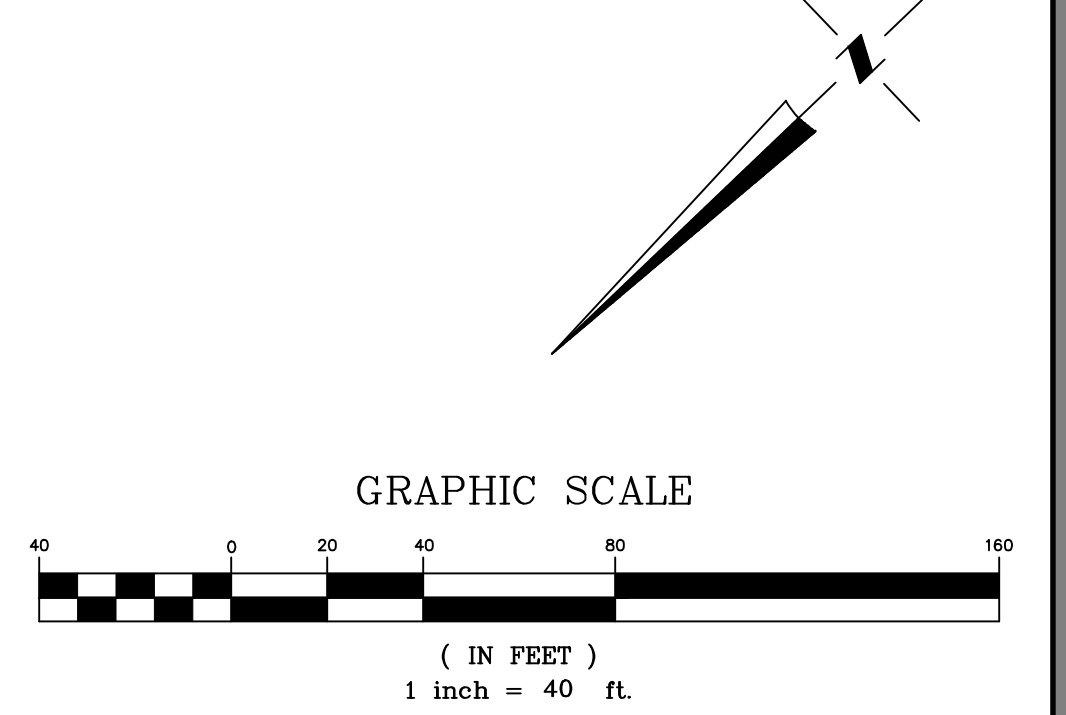
LANDSCAPE CALCULATIONS

LAND OWNER:	JEFFREY AND DONNA DONALDSON 2968 CHIMNEY ROCK ROAD HENDERSONVILLE, NC 28792
	THE DONALDSON FAMILY REVOCABLE TRUST 743 KYLES CREEK ROAD HENDERSONVILLE, NC 28792
PINS:	BETTY AND LARRY LAWS 2626 CHIMNEY ROCK ROAD HENDERSONVILLE, NC 28792
	9670708864, 9670708607, 9670706498
JURISDICTION:	PROJECT IS LOCATED WITHIN CITY LIMITS OF HENDERSONVILLE
TOWNSHIP:	CLEAR CREEK
DEED BOOK & PAGE:	1029 - 3, 3191 - 448, 1023 - 599
TOTAL PROJECT AREA:	±4.64 AC (202,118 SF)
CURRENT ZONING:	PRD-CZD
PROPOSED ZONING:	PRD-CZD
EXISTING USE:	SINGLE-FAMILY
PROPOSED USE:	MULTI-FAMILY HOUSING (SENIOR)
PROPOSED UNITS:	78 UNITS
- 36 (1) BR UNITS	
- 42 (2) BR UNITS	
PROPOSED DENSITY:	16.8 DU/AC
PROPOSED BUILDING HEIGHT:	50' (GRADE - MIDPOINT OF ROOF)
REQUIRED PARKING:	117
- 1.5 SPACES PER 1-2 BEDROOM UNITS	
- 2 SPACES PER 3+ BEDROOMS UNITS	
REQUIRED PARKING (REDUCED):	94
- REQUESTING 20% REDUCTION IN ENTRY CORRIDOR	
PROPOSED ON-SITE PARKING:	97
- HANDICAP PARKING:	13 (4 VAN ACCESSIBLE)
FRONT SETBACK:	40'
SIDE YARD:	45'
-BASED ON 1' FOR EVERY 1' ABOVE 35' IN BUILDING HEIGHT	
REAR YARD:	45'
-BASED ON 1' FOR EVERY 1' ABOVE 35' IN BUILDING HEIGHT	
OPEN SPACE/FOOTPRINT REQUIRED	
- MAXIMUM ALLOWABLE FOOTPRINT:	40,423 SF (20%)
- PROPOSED FOOTPRINT:	±25,500 SF (12.6%)
- PROPOSED GROSS FLOOR AREA:	±88,500 SF
- REQUIRED MINIMUM OPEN SPACE:	
500 SF PER UNIT WITH 78 UNITS TOTAL:	39,000 SF
SITE IS REQUIRED TO PROVIDE 17% OPEN SPACE BASED ON DENSITY BONUS REQUIREMENTS:	34,360 SF (17%)
- PROPOSED OPEN SPACE:	±39,000 SF (19.3%)
(HATCHED AREA INDICATES COMMON OPEN SPACE)	
- PROPOSED ASPHALT AREA:	±49,000 SF (25%)
- PROPOSED SIDEWALK AREA:	±9,400 SF (5%)

DEVELOPMENT SUMMARY

DEVELOPER PROPOSED CONCESSIONS	PROPOSED DEVELOPMENT IS LIHTC (LOW INCOME HOUSING TAX CREDIT) WITH ALL (78 UNITS) OF THE UNITS AT OR BELOW 80% AMI. PROPOSED DEVELOPMENT WILL PROVIDE SENIOR AFFORDABLE HOUSING AS GOVERNED BY NORTH CAROLINA HOUSING FINANCE AGENCY REQUIREMENTS.	CONDITIONS	DEVELOPER SHALL BE GRANTED A HEIGHT LIMITATION EXEMPTION IN ACCORDANCE WITH 5-14-6.5 OF THE ZONING ORDINANCE. THE HEIGHT LIMITATION EXEMPTION SHALL BE FOR A STRUCTURE MEASURING 50' TO THE MIDPOINT OF A GABLE, HIP OR GAMBREL ROOF.
			DEVELOPER SHALL BE GRANTED A DENSITY BONUS IN ACCORDANCE WITH 5-14-5 OF THE ZONING ORDINANCE. THE DENSITY BONUS SHALL ALLOW A DENSITY OF 16.8 UNITS PER ACRE.
			TREE BOARD CONDITIONS: ALL PRESERVED TREES MUST BE PROTECTED FROM CONSTRUCTION ACTIVITIES AS PRESCRIBED IN THE ZONING CODE 15.-4C REGARDLESS OF USE AS TREE CREDITS. AN ADDITIONAL 25 LARGE AND MEDIUM CANOPY TREES, 2 1" OR LARGER CALIPER, BEYOND THOSE SHOWN AS PRESERVED (10) ON THE SITE PLAN REVIEWED BY THE TREE BOARD, MUST BE PLANTED THROUGHOUT THE SITE. IMPLEMENT A VEGETATIVE PLANTING PLAN THAT WILL ENHANCE THE BANKS OF AND A 20 FOOT CORRIDOR AROUND THE STORMWATER POND TO PROVIDE FILTRATION AND INFILTRATION OF STORMWATER FROM TURF MANAGED AREAS AND ENHANCE WILDLIFE HABITAT. THE PLAN MUST INCLUDE DIVERSE AND APPROPRIATE SPECIES OF NATIVE UPLAND SHRUBS AND PERENNIAL HERBACEOUS PLANTS (INCLUDING WARM SEASON GRASSES, SEDGES, AND PLANTS IMPORTANT TO POLLINATORS) SELECTED FROM THE CITY'S RECOMMENDED LANDSCAPE SPECIES LIST FOR STREET TREES AND LAND DEVELOPMENT PROJECTS.

- DEVELOPMENT NOTES:
- COMMON OPEN SPACE**
1. DOCUMENTATION SHALL BE PROVIDED PRIOR TO FINAL SITE PLAN APPROVAL FOR ONGOING MAINTENANCE OF COMMON FACILITIES.
- STORMWATER MANAGEMENT**
1. STORMWATER APPROVAL FROM THE CITY ENGINEERING DEPARTMENT IS REQUIRED PRIOR TO FINAL SITE PLAN APPROVAL.
2. EROSION CONTROL APPROVAL IS REQUIRED FROM HENDERSON COUNTY PRIOR TO FINAL SITE PLAN APPROVAL.
- MISCELLANEOUS NOTES**
1. PROPOSED PROJECT TO BE CONSTRUCTED IN ONE PHASE.



Mc² ENGINEERING, INC.
2110 BEN CRAIG DR., STE. 400
CHARLOTTE, NC 28262
PHONE 704.510.9797

PROPOSED DEVELOPMENT:
WHITE PINE VILLAS
CHIMNEY ROCK ROAD
HENDERSONVILLE, NC

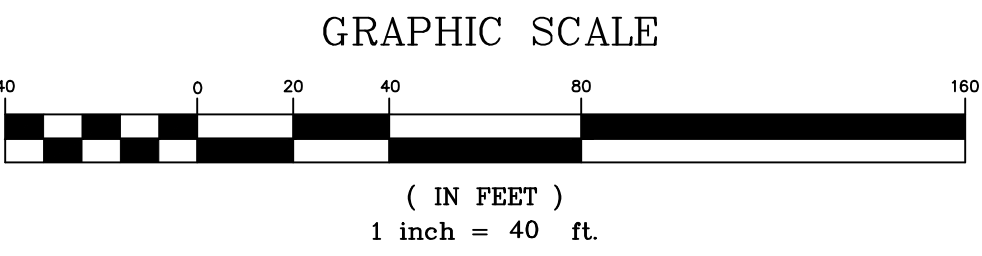
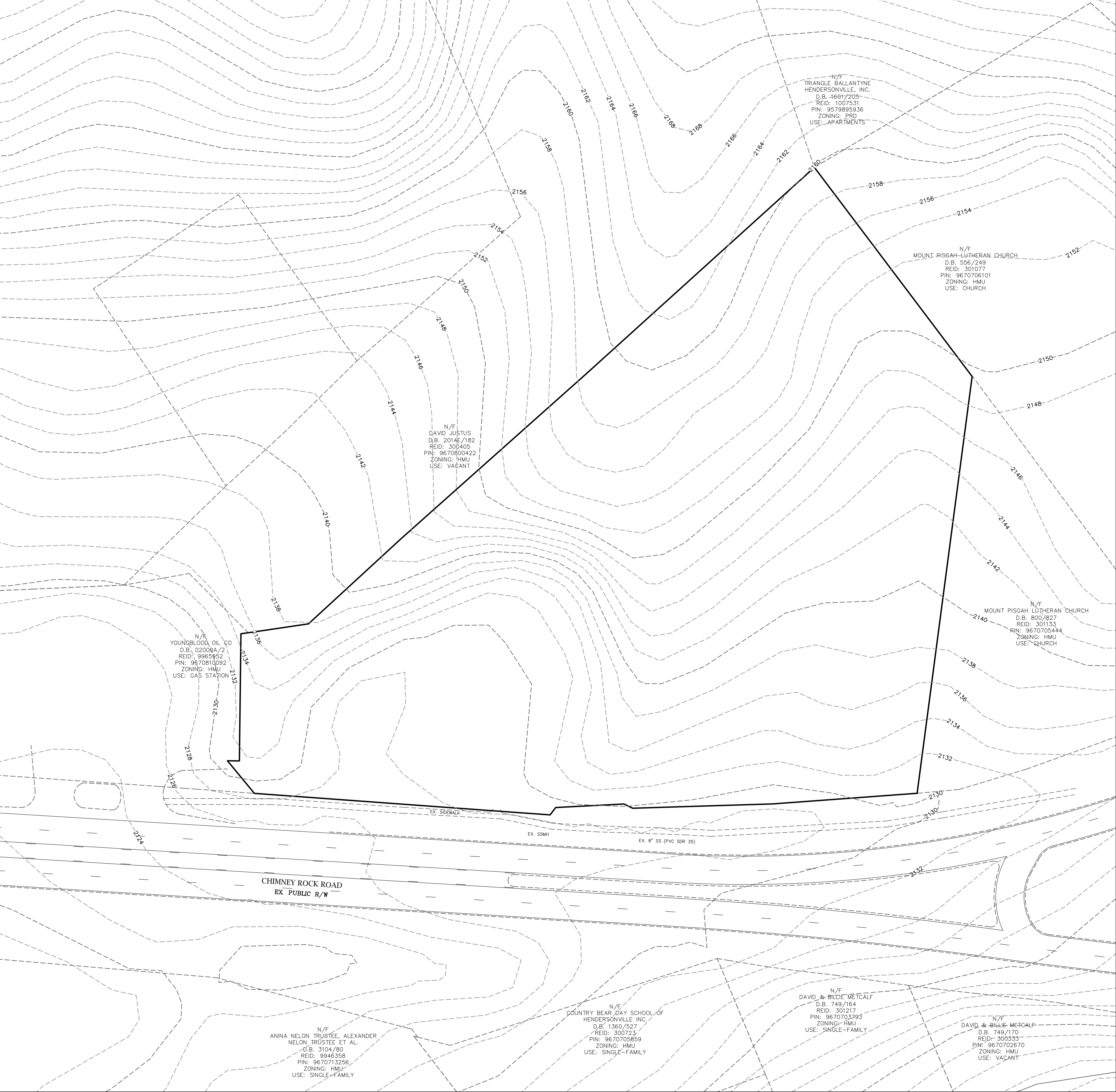
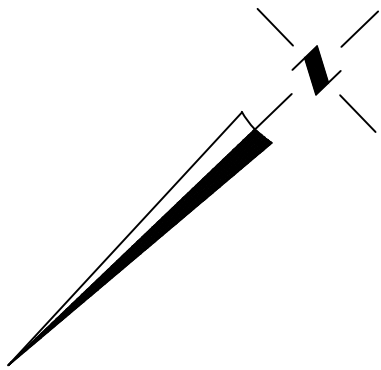
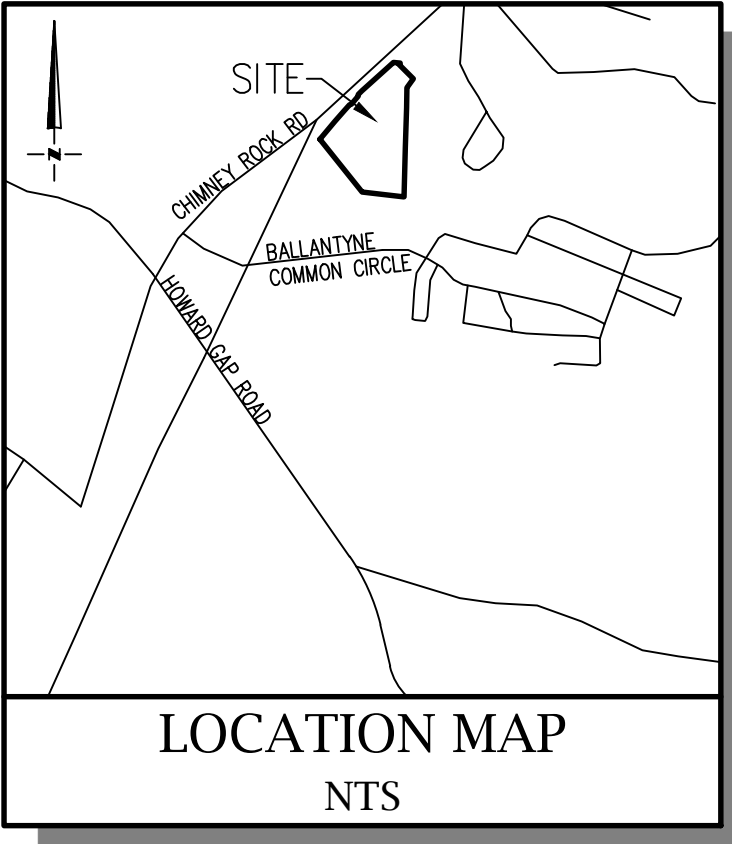
DEVELOPED BY:
WDT DEVELOPMENT LLC
266 COUNTRY CLUB DRIVE
HENDERSON, NC 27536

REZONING
SITE PLAN

		REVISIONS
1	3/31/22	HENDERSONVILLE COMMENTS
2	4/4/22	HENDERSONVILLE COMMENTS
3	4/19/22	HENDERSONVILLE COMMENTS

CAD FILE: 20-004 BASE.DWG
PROJECT NO.: 20-004
DESIGNED BY: JDM
DATE: JANUARY 14, 2021

SP1.0



Mc²
ENGINEERING
Mc² ENGINEERING, INC.
2110 BEN CRAIG DR., STE. 400
CHARLOTTE, NC 28262
PHONE 704.510.9797

PROPOSED DEVELOPMENT:
WHITE PINE VILLAS
CHIMNEY ROCK ROAD
HENDERSONVILLE, NC

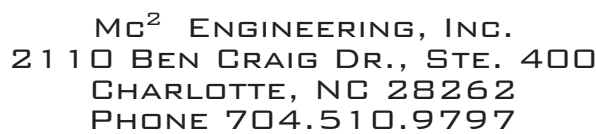
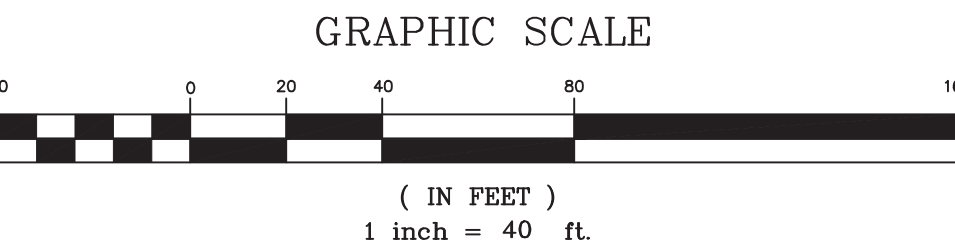
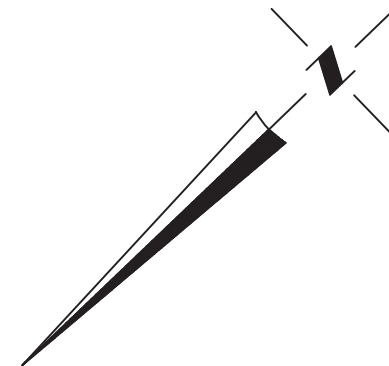
DEVELOPED BY:
**BROADCAST
CONSTRUCTION &
DEVELOPMENT, INC.**
195 ROCKBRIDGE ROAD
MILLS RIVER, NC 28759

**EXISTING
CONDITIONS**

REVISIONS	

CAD FILE: 20-004 BASE.DWG
PROJECT NO.: 20-004
DESIGNED BY: JDM
DATE: JANUARY 14, 2021

SP4.0

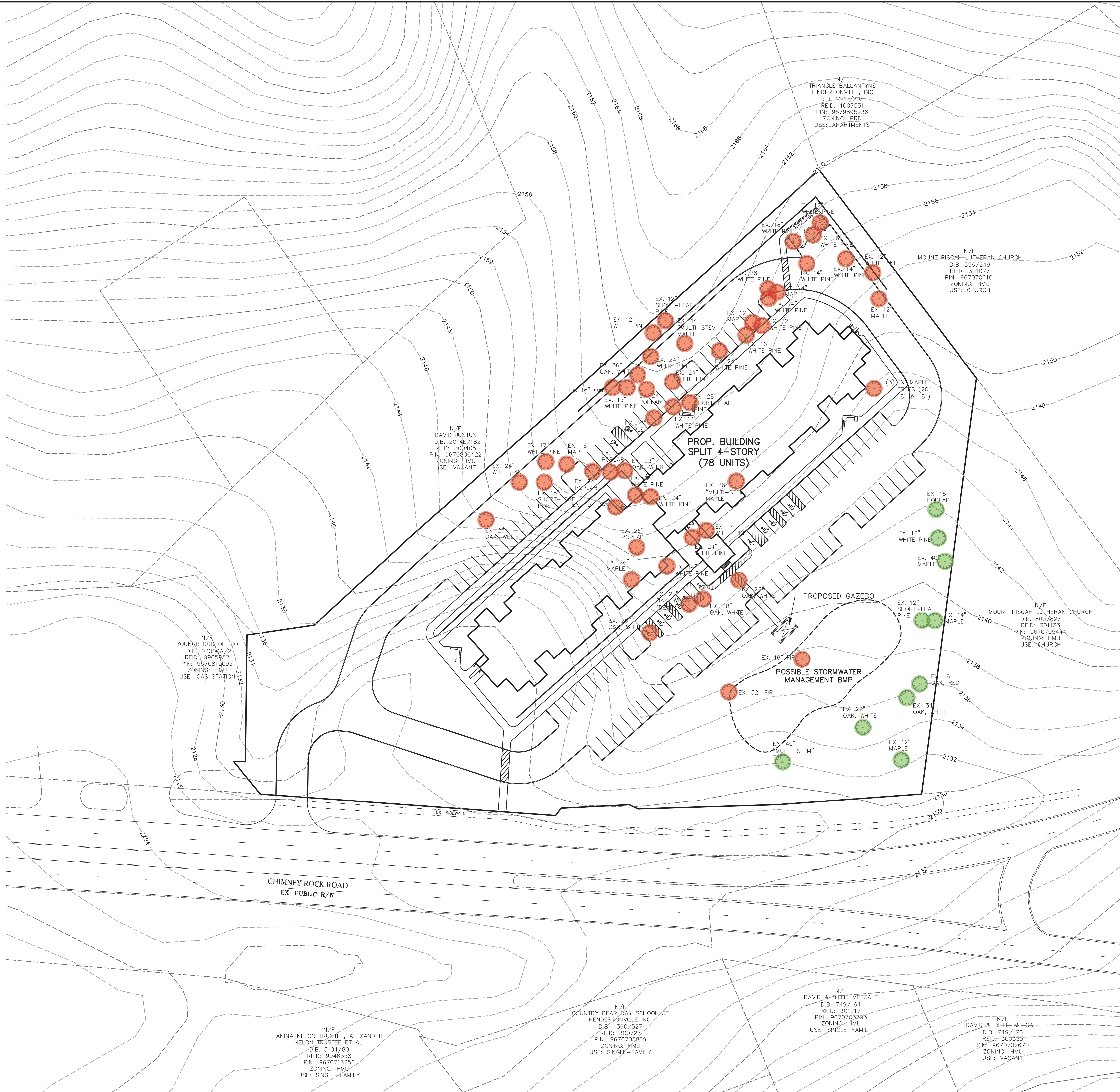


DEVELOPED BY:
**BROADCAST
CONSTRUCTION &
DEVELOPMENT, INC.**
195 ROCKBRIDGE ROAD
MILLS RIVER, NC 28759

REZONING TREE SURVEY

[illegible]

SP3.0



NOT FOR
CONSTRUCTION

SEALS

CONSULTANTS

WDT DEVELOPMENT,
LLC

WHITE PINE
VILLAS

HENDERSONVILLE,
NORTH CAROLINA

22-409.00

REVISIONS

DATE

DATE: MARCH 21, 2022
ISSUED FOR: REVIEW SET - 4 / 4 STEPPED w/ SHADOW

SET#

Site Plans /
Shadow Study

SHEET

SA100

DRAWN BY: CHECKED BY: JMR

N/F
REID: 9946358
PIN: 9670713256
ZONING: HMU
USE: SINGLE-FAMILY

N/F
COUNTRY BEAR DAY SCHOOL OF
HENDERSONVILLE INC.
D.B. 1360/527
REID: 300723
PIN: 9670705859
ZONING: HMU
USE: SINGLE-FAMILY

N/F
DAVID & BILLIE METCALF
D.B. 749/164
REID: 301217
PIN: 9670703793
ZONING: HMU
USE: SINGLE-FAMILY

N/F
DAVID & BILLIE METCALF
D.B. 749/170
REID: 300333
PIN: 967070670
ZONING: HMU
USE: VACANT

N/F
MOUNT PISGAH LUTHERAN CHURCH
D.B. 800/627
REID: 301133
PIN: 9670705444
ZONING: HMU
USE: CHURCH

N/F
MOUNT PISGAH LUTHERAN CHURCH
D.B. 556/249
REID: 301077
PIN: 9670706101
ZONING: HMU
USE: CHURCH

SITE INFORMATION:
SITE ACREAGE: (+/-) 4.64 ACRES
SITE ACCESS: FROM CHIMNEY ROCK ROAD
TOTAL PARKING SPACES PROVIDED: = 97 SPACES
TOTAL NUMBER OF BUILDINGS: (1) RESIDENTIAL BUILDING
FLOOD PLAIN: NONE
RETAINING WALLS EXISTING/PLANNED: NONE/NONE

N/F
YOUNGBLOOD OIL CO
D.B. 02000A/2
REID: 9965952
PIN: 9670810092
ZONING: HMU
USE: GAS STATION

ENTRY SIGN

BUILDING WILL NOT BLOCK SUNLIGHT FROM
ADJACENT PROPERTY BETWEEN THE
HOURS OF 10:00 A.M. AND 2:00 P.M. FROM
THE MONTHS OF OCTOBER 1ST TO MAY 1ST.
NO SHADOWS WILL BE CAST ONTO AN
ADJACENT PROPERTY."

OUTDOOR SITTING AREA

N/F
DAVID JUSTUS
D.B. 2014E/182
REID: 300405
PIN: 9670800422
ZONING: HMU
USE: VACANT

COMMUNITY/MULTI
PURPOSE ROOM
(Second Floor)

SCREEN PORCH
(Second Floor)

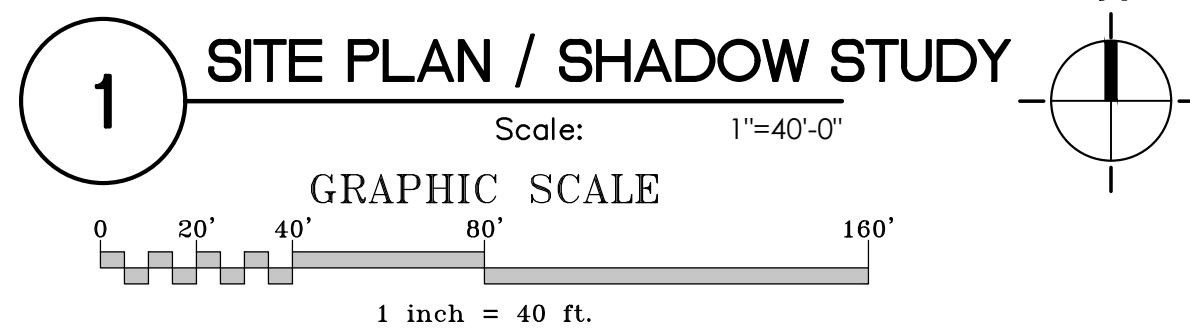
RESIDENT COMPUTER CENTER
(Third Floor)

INDOOR SEATING AREAS
(All Floors)

EXERCISE ROOM
(Third Floor)

TYPICAL ACCESSIBLE DUMPSTER
W/ VINYL SCREEN ENCLOSURE
AND PLANTINGS

N/F
TRIANGLE BALLANTYNE
HENDERSONVILLE, INC.
D.B. 1601/205
REID: 1007531
PIN: 9579895936
ZONING: PRD
USE: APARTMENTS





**CITY OF HENDERSONVILLE
COMMUNITY DEVELOPMENT DEPARTMENT**

100 N. King Street, Hendersonville, NC 28792

Phone (828) 697-3010 | Fax (828) 698-6185

www.hendersonvillenc.gov

**Conditional Zoning District Petition
Section 7-4 and Article 11 City Zoning Ordinance**

The following are the **required** submittals for a complete application for rezoning a property or properties to a Conditional Zoning District. Staff will not review applications until each item has been submitted and determined complete. By placing a check mark by each of the following items, you are certifying that you have performed that task.

- ☐ 1. Scheduled Pre-Application meeting with Planning Staff
 - 1a. Completed Neighborhood Compatibility Meeting – Contact Staff & Review CZD Checklist for additional information
- ☐ 2. Water and Sewer Availability Request
- ☐ 3. Completed Application Form
- ☐ 4. Completed Signature Page (completed Owner's Affidavit if different from applicant)
- ☐ 5. Completed Site Plan as described in Section 7-4.3-1 of the City Zoning Ordinance
- ☐ 6. Detailed explanation of any Proposed Development Description
- ☐ 7. Application Fee

Note: Additional Approvals prior to the issuance of a Zoning Compliance Permit may include, but are not limited to the following:

- Henderson County Sedimentation & Erosion Permit
- Stormwater Management Plan
- Utility Approval
- NCDOT Permit
- Any other applicable permits as determined by the Community Development

[Application Continued on Next Page]

Office Use:

Date Received: _____ By: _____ Fee Received? Y/N

A. Applicant Contact Information

Dennis Tharrington

* Printed Applicant Name

WDT Development, LLC

Printed Company Name (if applicable)

☐ Corporation

☒ Limited Liability Company

☐ Trust

☐ Partnership

☐ Other: _____

W. D. Tharrington

Applicant Signature

managing member

Applicant Title (if applicable)

266 Country Club Drive

Address of Applicant

Henderson, NC 27536

City, State, and Zip Code

828-551-6970

Telephone

Stephen@BroadCraftConstruction.com

Email

* 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.

[Application Continued on Next Page]

B- Property Owner Contact Information (if different from Applicant)

Beth Ann Laws Russell Joseph W. Russell

*Printed Owner Name

Printed Company Name (if applicable)

☐ Corporation

☐ Limited Liability Company

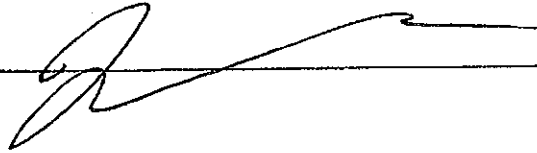
☐ Trust

☐ Partnership

☒ Other: Estate

Beth Ann L. Russell

Property Owner Signature



Property Owner Title (if applicable)

Hendersonville, NC 28792

City, State, and Zip Code

828-329-1220

Telephone

barussell195@yahoo.com

Email

* Property owner hereby grants permission to the City of Hendersonville personnel to enter the subject property for any purpose required in processing this application.

* If signed by an agent on behalf of the Owner, this petition MUST be accompanied by a Limited Power of Attorney signed by the property owner (s) and notarized, specifically authorizing the agent to act on the owner (s) behalf in signing this application. Failure of each owner, or their duly authorized agent, to sign, or failure to include the authority of the agent signed by the property owner, will result in an INVALID APPLICATION.

Note: Additional Owner Signature pages attached.

C. Property Information

Name of Project: White Pine Villas

PIN(s): 9670706498 / 9670708697 / 9670708864

Address(es) / Location of Property: 2620 Chimney Rock Road

Type of Development: X Residential Commercial Other

Current Zoning: PRD-CZD

Total Acreage: 4.64

Proposed Zoning: _____

Proposed Building Square Footage: 90,073

Number of Dwelling Units: 78

List of Requested Uses: To develop and build a (4) story affordable senior housing community consisting of (78) apartment units.

D. Proposed Development Conditions for the Site

In the spaces provided below, please provide a description of the Proposed Development for the site.

Single (4) story building with (78) apartment units. All one or two bedroom. This is a proposed 2022 tax credit development for seniors. There will be on site office and staffing. Aside from the apartment units, there will be lots of common space with gathering & community room, exercise room, computer room, library, sitting area, screened porch, and sitting areas and gazebo outside.

Additional Property Owners: (Signature indicates intent that this page be affixed to Application.)

Regina G. Veach

*Printed Owner Name

Michael Veach

Printed Company Name (if applicable)

☐ Corporation

☐ Limited Liability Company

☐ Trust

☐ Partnership

☒ Other: Estate

Regina Veach

Property Owner Signature

Michael Veach

Property Owner Title (if applicable)

Hendersonville, NC 28792

City, State, and Zip Code

828-606-6728

Telephone

moxieveach@yahoo.com

Email

* Property owner hereby grants permission to the City of Hendersonville personnel to enter the subject property for any purpose required in processing this application.

* If signed by an agent on behalf of the Owner, this petition MUST be accompanied by a Limited Power of Attorney signed by the property owner (s) and notarized, specifically authorizing the agent to act on the owner (s) behalf in signing this application. Failure of each owner, or their duly authorized agent, to sign, or failure to include the authority of the agent signed by the property owner, will result in an INVALID APPLICATION.

Angela L. Jones

*Printed Owner Name

Printed Company Name (if applicable)

☐ Corporation

☐ Limited Liability Company

☐ Trust

☐ Partnership

☒ Other: Estate

Property Owner Signature

Property Owner Title (if applicable)

Hendersonville, NC 28792

City, State, and Zip Code

828-243-6363

Telephone

moxie1283@live.com

Email

* Property owner hereby grants permission to the City of Hendersonville personnel to enter the subject property for any purpose required in processing this application.

* If signed by an agent on behalf of the Owner, this petition MUST be accompanied by a Limited Power of Attorney signed by the property owner (s) and notarized, specifically authorizing the agent to act on the owner (s) behalf in signing this application. Failure of each owner, or their duly authorized agent, to sign, or failure to include the authority of the agent signed by the property owner, will result in an INVALID APPLICATION.

Donna B. Donabson

*Printed Owner Name

Na

Printed Company Name (if applicable)

☐ Corporation☐ Limited Liability Company☐ Trust☐ Partnership☐ Other: _____Donna B. Donabson

Property Owner Signature

Property Owner Title (if applicable)

P.O. Box 250 Edregville, NC 28727

City, State, and Zip Code

(828) 696-5737

Telephone

donna@apple-country.com

Email

* Property owner hereby grants permission to the City of Hendersonville personnel to enter the subject property for any purpose required in processing this application.

* If signed by an agent on behalf of the Owner, this petition MUST be accompanied by a Limited Power of Attorney signed by the property owner (s) and notarized, specifically authorizing the agent to act on the owner (s) behalf in signing this application. Failure of each owner, or their duly authorized agent, to sign, or failure to include the authority of the agent signed by the property owner, will result in an INVALID APPLICATION.

B. Property Owner Contact Information (if different from Applicant)

Jeffrey S. Donaldson

*Printed Owner Name

n/a

Printed Company Name (if applicable)

☐ Corporation

☐ Limited Liability Company

☐ Trust

☐ Partnership

☐ Other:



Property Owner Signature

Property Owner Title (if applicable)

2968 Chimney Rock Rd Hendersonville, NC 28792

City, State, and Zip Code

(828) 696-5788

Telephone

jeff@apple-country.com

Email

* Property owner hereby grants permission to the City of Hendersonville personnel to enter the subject property for any purpose required in processing this application.

* If signed by an agent on behalf of the Owner, this petition MUST be accompanied by a Limited Power of Attorney signed by the property owner (s) and notarized, specifically authorizing the agent to act on the owner (s) behalf in signing this application. Failure of each owner, or their duly authorized agent, to sign, or failure to include the authority of the agent signed by the property owner, will result in an INVALID APPLICATION.

Note: Additional Owner Signature pages attached.

Additional Property Owners: (Signature indicates intent that this page be affixed to Application.)

Jennifer McCarson

*Printed Owner Name

n/a

Printed Company Name (if applicable)

☐ Corporation

☐ Limited Liability Company

☒ Trust

☐ Partnership

☐ Other:

Jennifer McCarson

Property Owner Signature

Trustee

Property Owner Title (if applicable)

872 Townsend Rd Hendersonville, NC 28792

City, State, and Zip Code

(828) 674-8590

Telephone

jmc Carson68@gmail.com

Email

* Property owner hereby grants permission to the City of Hendersonville personnel to enter the subject property for any purpose required in processing this application.


* If signed by an agent on behalf of the Owner, this petition MUST be accompanied by a Limited Power of Attorney signed by the property owner (s) and notarized, specifically authorizing the agent to act on the owner (s) behalf in signing this application. Failure of each owner, or their duly authorized agent, to sign, or failure to include the authority of the agent signed by the property owner, will result in an INVALID APPLICATION.

Additional Property Owners: (Signature indicates intent that this page be affixed to Application.)

Jeffrey S. Donabson
*Printed Owner Name

Printed Company Name (if applicable)

☐ Corporation ☐ Limited Liability Company ☐ Trust ☐ Partnership

☐ Other: 
Property Owner Signature

Property Owner Title (if applicable)

2968 Chimney Rock Rd Hendersonville, NC 28792
City, State, and Zip Code

(828) 696-5788
Telephone

jeff@apple-country.com
Email

* Property owner hereby grants permission to the City of Hendersonville personnel to enter the subject property for any purpose required in processing this application.

* If signed by an agent on behalf of the Owner, this petition MUST be accompanied by a Limited Power of Attorney signed by the property owner (s) and notarized, specifically authorizing the agent to act on the owner (s) behalf in signing this application. Failure of each owner, or their duly authorized agent, to sign, or failure to include the authority of the agent signed by the property owner, will result in an INVALID APPLICATION.

City of Hendersonville

Certification of Mailing of Public Notice

IN RE: White Pine Villas

File # P22-13-CZD

I hereby certify that official notice of the City Council Meeting on May 5, 2022, 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: 4.19.22

Site posted this date per Section 7-4-8 of the City of Hendersonville Zoning Ordinance.

Terri Swann

Terri Swann
Administrative Assistant III

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:

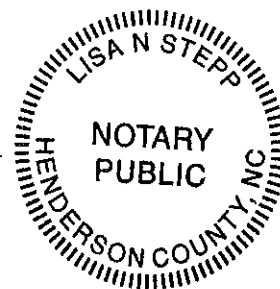
Terri Swann

Date: 4/19/2022

Notary Signature: *Lisa N Stepp*

Notary Printed Name: Lisa N Stepp
(Official Seal)

My Commission Expires: September 5, 2022



CITY COUNCIL:
BARBARA G. VOLK
Mayor
LYNDSEY SIMPSON
Mayor Pro Tem
DR. JENNIFER HENSLEY
DEBBIE O'NEAL-ROUNDTREE
JERRY A. SMITH, JR.

CITY OF HENDERSONVILLE

The City of Four Seasons

COMMUNITY DEVELOPMENT DEPARTMENT PLANNING DIVISION

Section 7, Item D.

JOHN F. CONNET
City Manager
ANGELA S. BEEKER
City Attorney
ANGELA REECE
City Clerk

April 19, 2022

RE: Application for a Conditional Zoning District
White Pine Villas (File P22-13-CZD)

Dear Property Owner(s):

You have been identified as the owner(s) of property situated within 400 feet of a proposed rezoning to a Conditional Zoning District. The City of Hendersonville is in receipt of an application for a Conditional Zoning District from Dennis Tharrington and Stephen Drake of WDT Development, LLC. The applicant is requesting to rezone the subject properties identified as PIN's 9670-70-6498, 9670-70-8697 and 9670-70-8864 and located at 2620 Chimney Rock Road. from PRD CZD, Planned Residential Development Conditional Zoning District to PRD CZD, Planned Residential Development Conditional Zoning District for the construction of a four-story, 78-unit, +/-88,500 sq. ft. multi-family development on approximately 4.64 acres. The applicant is applying to receive Low-Income Housing Tax Credits. **This will not rezone your property.**

The Hendersonville Planning Board at its meeting held April 11, 2022, voted to recommend this application to City Council.

The Hendersonville City Council will hold its regular monthly meeting on Thursday, May 5, 2022 beginning at 5:45 p.m. in the Assembly Room of the City Operations Building, 305 Williams Street, Hendersonville N.C.

To submit a public comment **before** the meeting:

Anyone wishing to submit written public comments prior to the meeting may visit <https://www.hendersonvillenc.gov/comment> to submit their comment. Written comments must be submitted by noon the day of the meeting to be considered by the City Council. If comments include photo(s) or video they must be submitted by 8:00 a.m. the day prior to the meeting to be considered by the City Council.

To participate **during** the meeting:

- Visit <https://zoom.us/join> and enter the Meeting ID and Password
- Meeting ID: 822 0104 2528
- Password: 1847

- Join the meeting by phone

Phone Number: +1- 646- 558- 8656 US

Meeting ID: 822 0104 2528

Password: 1847

The public may also view, listen and verbally comment on public hearings 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. In order to comment during the meeting, virtual participants should use the 'raise hand' feature or press *9 to raise hand if dialing in.

If you have any questions or need assistance submitting public comment, please call the Community Development Department at (828) 697-3010.

Sincerely,



Terri R. Swann, CZO

Administrative Assistant III

GORDON'S CONSTRUCTIVE SERVICES LLC 140 SULTANA DR HENDERSONVILLE, NC 28739	LAUGHTER, JENNIFER LYNN 2418 GREATER DRUID HILLS BLVD HENDERSONVILLE, NC 28791	WILLIAMS, FRED W PO BOX 552 LAKE LURE, NC 28746
METCALF, BILLIE DOVE;METCALF, TIMOTHY DAVID 2625 CHIMNEY ROCK RD HENDERSONVILLE, NC 28792	TRIANGLE BALLANTYNE HENDERSONVILLE, INC PO BOX 4158 GASTONIA, NC 28054	INGLES MARKETS INCORP PO BOX 460189, DEPT 203 HOUSTON, TX 77056
MOUNT PISGAH LUTHERAN CHURCH 2606 CHIMNEY ROCK RD HENDERSONVILLE, NC 28792	P48 LLC 1583 BALD ROCK RD HENDERSONVILLE, NC 28792	JUSTUS, DAVID LEE 2650 CHIMNEY ROCK RD HENDERSONVILLE, NC 28792
LAWS, BETTY B;LAWS, LARRY 2626 CHIMNEY ROCK RD HENDERSONVILLE, NC 28792	DONALDSON, MARTHA JOANN TRUSTEE;DONALDSON, JEFFREY TRUSTEE;MCCARSON, JENNIFER TRUSTEE;ALAN J DONALDSON 743 KYLES CREEK RD HENDERSONVILLE, NC 28792	DONALDSON, JEFFREY S;DONALDSON, DONNA B 2968 CHIMNEY ROCK RD HENDERSONVILLE, NC 28792
NELON, ANINA D. TRUSTEE;NELON, ALEXANDER E. TRUSTEE 109 ST MARYS DR HENDERSONVILLE, NC 28792	JUSTUS, DAVID LEE;JUSTUS, DORIS 20 GRASSY HILLS DR HENDERSONVILLE, NC 28792	YOUNGBLOOD OIL CO PO BOX 2590 HENDERSONVILLE, NC 28793



StarNews | The Dispatch | Times-News
Sun Journal | The Daily News | The Star
The Free Press | Gaston Gazette

Order Confirmation

Not an Invoice

Section 7, Item D.

Account Number:	488558
Customer Name:	City Of Hendersonville
Customer Address:	City Of Hendersonville 160 6Th AVE E City Clerk Hendersonville NC 28792-3775
Contact Name:	Angela Reece
Contact Phone:	828-697-3005
Contact Email:	areece@hvlnc.gov
PO Number:	

Date:	04/20/2022
Order Number:	7197615
Prepayment Amount:	\$ 0.00

Column Count:	1.0000
Line Count:	145.0000
Height in Inches:	0.0000

Print

Product	#Insertions	Start - End	Category
HEN Times-News	2	04/24/2022 - 05/01/2022	Govt Public Notices
HEN blueridgenow.com	2	04/24/2022 - 05/01/2022	Govt Public Notices

Total Order Confirmation	\$39.80
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Ad Preview

Section 7, Item D.

PUBLIC HEARING NOTICE

Notice is hereby given that the City of Hendersonville City Council will hold four public hearings on Thursday, May 5, 2022, at 5:45 p.m., or as soon thereafter as possible in the City Operations Assembly Room located at 305 Williams Street, Hendersonville NC to consider the following:

I. Zoning Text Amendment – Conditional Zoning District (CZD) Rezoning Required (P22-25-27A) – City staff initiated Zoning Text Amendment to establish a conditional zoning requirement for development or redevelopment of 20,000 square feet or more and the development of 50 residential units or more across all zoning districts within the City, subject to examinations explicitly established within the Zoning Ordinance.

II. Conditional Zoning District Hawkins Pointe (P22-16-CZD) – Application for a Conditional Zoning District from Clay Cooper of Woda Cooper Companies LLC. The applicant is requesting to rezone the subject property, PIN's 9568-48-8860, 9568-48-9996, 9568-58-1016, 9568-58-2974, 9568-58-491, and 9568-58-3724 and located on Sixth Avenue and Florida Avenue from MUC, Medical, Institutional, Cultural to UR CZD, Urban Residential Conditional Zoning District for the construction of a 3-4-story multi-unit, +/-55,500 sq ft multi-family development on approximately 1.66 acres. The applicant is applying to receive Low-Income Housing Tax Credits.

III. Conditional Zoning District – White Pine Villas (P22-15CZD) – Application for a Conditional Zoning District from Dennis Thorrington and Stephen Drake of WDT Development, LLC. The applicant is requesting to rezone the subject properties identified as PIN's 9670-70-6495, 9670-70-8697 and 9670-70-8864 and located at 2620 Chimney Rock Road from PRD CZD, Planned Residential Development Conditional Zoning District to PRD CZD, Planned Residential Development Conditional Zoning District for the construction of a four-story, 78-unit, +/-48,500 sq. ft. multi-family development on approximately 4.44 acres. The applicant is applying to receive Low-Income Housing Tax Credits.

IV. Conditional Zoning District – Southgate Apartments (P21-62-CZD) – Application for a conditional rezoning from Suzanne Godsey of Site-work Studios, applicant and David W. Royster, III of Capital Funds, Inc., property owner. The applicants are requesting to rezone the subject property, PIN 9568-75-3382 and located off of Kanawha Road, from C-2, Secondary Business to CMU CZD, Central Mixed Use Conditional Zoning District for the construction of a 4-story, 70-unit, 81,897 sq ft multi-family development on approximately 3.63 acres.

Digital/written public hearing comments must be received twenty-four hours prior to the meeting (by 5:45 a.m. on Wednesday, May 4, 2022) to be considered by the City Council and must comply with security criteria in the Council's Public Comment Policy, available on the City's website.

Public hearing comments will also be accepted during the meeting from those attending in person and from those participating live via ZOOM at the designated time of this meeting. For security reasons screen sharing will not be allowed. Anyone wishing to submit written/digital public hearing comments for these public hearings prior to the meeting may visit <https://www.hendersonvillenc.org/comment> to submit their comment. It is not necessary to submit digital comments if you are planning to address City Council during the meeting.

The meeting instructions to join by Zoom will be available on the City's website calendar by visiting <https://www.hendersonvillenc.org/events-calendar> and as follows:

Zoom information for the meeting is: <https://zoom.us/join>
Dial-in by phone: (440) 538-8655
Meeting ID: 822 004 5328
Passcode: 1847

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 no later than 24 hours in advance of the meeting (893) 897-3005.

87197615 4/24, 5/1/2022

PUBLIC HEARING NOTICE

Notice is hereby given that the City of Hendersonville City Council will hold four public hearings on Thursday, May 5, 2022, at 5:45 p.m., or as soon thereafter as possible in the City Operations Assembly Room located at 305 Williams Street, Hendersonville NC to consider the following:

- I. **Zoning Text Amendment – Conditional Zoning District (CZD) Rezoning Required (P22-25-ZTA)** - City staff initiated Zoning Text Amendment to establish a conditional zoning requirement for development or redevelopment of 50,000 square feet or more and the development of 50 residential units or more across all zoning districts within the City, subject to exemptions explicitly established within the Zoning Ordinance.

- II. **Conditional Zoning District – Hawkins Pointe (P22-16-CZD)** - Application for a Conditional Zoning District from Clay Cooper of Woda Cooper Companies LLC. The applicant is requesting to rezone the subject property, PIN's 9568-48-9860, 9568-48-9996, 9568-58-1916, 9568-58-2974, 9568-58-491, and 9568-58-3734 and located on Sixth Avenue and Florida Avenue, from MIC, Medical, Institutional, Cultural to UR CZD, Urban Residential Conditional Zoning District for the construction of a 3-4-story split, 52-unit, +/-55,500 sq ft multi-family development on approximately 1.66 acres. The applicant is applying to receive Low-Income Housing Tax Credits.

- III. **Conditional Zoning District – White Pine Villas (P22-13-CZD)** - Application for a Conditional Zoning District from Dennis Tharrington and Stephen Drake of WDT Development, LLC. The applicant is requesting to rezone the subject properties identified as PIN's 9670-70-6498, 9670-70-8697 and 9670-70-8864 and located at 2620 Chimney Rock Road. from PRD CZD, Planned Residential Development Conditional Zoning District to PRD CZD, Planned Residential Development Conditional Zoning District for the construction of a four-story, 78-unit, +/-88,500 sq. ft. multi-family development on approximately 4.64 acres. The applicant is applying to receive Low-Income Housing Tax Credits.

- IV. **Conditional Zoning District – Southgate Apartments (P21-62-CZD)** - Application for a conditional rezoning from Suzanne Godsey of Sitework Studios, applicant and David W. Royster, III of Capitol Funds, Inc., property owner. The applicants are requesting to rezone the subject property, PIN 9568-75-5382 and located off of Kanuga Road, from C-2, Secondary Business to CMU CZD, Central Mixed Use Conditional Zoning District for the construction of a 4-story, 70-unit, 81,897 sq ft multi-family development on approximately 3.63 acres.

Digital/written public hearing comments must be received twenty-four hours prior to the meeting (by 5:45 p.m. on Wednesday May 4th) to be considered by the City Council **and must** comply with security criteria in the Council's Public Comment Policy, available on the City's website.

Public hearing comments will also be accepted during the meeting from those attending in person and from those participating live via ZOOM at the designated time at this meeting. For security reasons screen sharing will not be allowed. Anyone wishing to submit written/digital public hearing comments for these public hearings prior to the meeting may visit <https://www.hendersonvillenc.gov/comment> to submit their comment. It is not necessary to submit digital comments if you are planning to address City Council during the meeting.

The meeting instructions to join by Zoom will be available on the City's website calendar by visiting <https://www.hendersonvillenc.gov/events-calendar> and as follows:

Zoom information for the meeting is: <https://zoom.us/join>
Dial-in by phone: (646) 558-8656
Meeting ID: 822 0104 2528
Passcode: 1847

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 no later than 24 hours in advance of the meeting (828) 697-3005.

Run two times: Sunday, April 24, 2022, Sunday, May 1, 2022



CITY OF HENDERSONVILLE

AGENDA ITEM SUMMARY

PLANNING DIVISION

SUBMITTER: Matthew Manley, Planning Manager

MEETING DATE: May 5, 2022

AGENDA SECTION: Public Hearing

DEPARTMENT: Community Development

TITLE OF ITEM: Rezoning: Conditional Zoning District – Southgate Apartments (P21-62-CZD) – *Matthew Manley, AICP – Planning Manager*

SUGGESTED MOTION(S):

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 (PIN: 9568-75-5382) from C-2, Secondary Business to CMU-CZD Central Mixed Use - Conditional Zoning District based on the site plan and list of conditions submitted by and agreed to by the applicant, [dated April 8, 2022,] and presented at this meeting and subject to the following:

1. The development shall be consistent with the site plan, including the list of applicable conditions contained therein, and the following permitted uses

Permitted Uses:

1. Residential Dwellings, Multi-Family

[for amendments to uses or conditions discussed and agreed upon in the Council meeting (between City & Developer) and not yet represented on the site plan, please use the following language, disregard #2 if not needed]

2. Permitted uses and applicable conditions presented on the site plan shall be amended to include:

3. The petition is found to be consistent with the City of Hendersonville 2030 Comprehensive Plan based on the information from the staff analysis and because:

For Recommending Denial:

I move City Council **deny** an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of the subject property (PIN: 9568-75-5382) from C-2, Secondary Business to CMU-CZD Central Mixed Use - Conditional Zoning District based on the following:

1. The petition is found to be consistent with the City of Hendersonville 2030 Comprehensive Plan based on the information from the staff analysis and because:

1. The High Intensity Neighborhood designation calls for Multi-Family Residential as a primary land use and the proposed site plan aligns with a majority of development guidelines listed under LU 7.4.

2. We do not find this petition to be reasonable and in the public interest based on the information from the staff analysis, public hearing and because:

1. The petition would add an additional 67,225 Sq Ft of buildings, parking lots and streets to a parcel of which a portion is currently utilized for flood storage. This would make 48.7% of the site impervious.
2. The scale, massing and/or architectural design of the proposed building is not compatible with existing character of the neighborhood between Israel St and Kanuga Rd.

<div>1. The High Intensity Neighborhood designation calls for Multi-Family Residential as a primary land use and the proposed site plan aligns with a majority of development guidelines listed under LU 7.4.</div> <div>4. Furthermore, we find this petition to be reasonable and in the public interest based on the information from the staff analysis, public hearing and because:</div> <div><div>1. The petition is located in a Priority Infill Area which recommends redevelopment of underutilized lots</div><div>2. The petition provides infill development utilizing existing infrastructure</div><div>3. The petition provides additional housing in close proximity to downtown and the future Ecusta Trail and in close proximity to goods and services</div><div>4. The petition provides a transition from uses of high intensity to lower intensity uses</div><div>5. The existing C-2 zoning provides a wide range of high intensity commercial uses including car washes, automobile and farm equipment sales, hotels, animal hospitals, service stations, and small-scale manufacturing by right up to 50,000 Sq Ft. The petition for multi-family housing in the CMU District provides greater compatibility with surrounding land uses than other potential by-right developments.</div><div>6. The proposed development provides access from a major thoroughfare</div></div> <div>[DISCUSS & VOTE]</div>	<div><div>3. Israel St is a substandard local street which is not designed to accommodate additional traffic.</div><div>4. 17 of 21 mature trees on the site will be removed.</div></div> <div>[DISCUSS & VOTE]</div>
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SUMMARY: The City of Hendersonville is in receipt of an application for a Conditional Zoning District from Suzanne Godsey of Sitework Studios, applicant and David W. Royster, III of Capitol Funds, Inc., property owner. The applicants are requesting to rezone the subject property (PIN 9568-75-5382) from C-2, Secondary Business to CMU-CZD, for the construction of a 60’ tall, 70-unit apartment building on approximately 3.63 acres. The Central Mixed Use district does not have a density cap.

There is one 4-story building proposed with a total of 81,897 Sq Ft (Gross Floor Area). The stated use of the site is residential, multi-family.

The site is currently vacant and contains approximately 1.44 Acres of 100-year floodplain

(40%). The site features a cluster of mature trees alongside Israel St – most of which are proposed to be removed and the area will be replanted. The site had previously been occupied for outdoor storage.

This project required a conditional rezoning due to the scale of the proposed development exceeding 50,000 Sq Ft and more than 50 units.

PROJECT/PETITIONER NUMBER:	P21-62-CZD
PETITIONER NAME:	Suzanne Godsey, Site Work Studios (applicant) David W.Royster III, Capitol Funds, Inc. (owner / developer)
ATTACHMENTS:	1. Staff Report 2. Proposed Site Plan / Elevations 3. Neighborhood Compatibility Summary 4. Tree Board Summary 5. Planning Board Summary 6. Proposed Zoning Map 7. Draft Ordinance 8. Application / Owner Signature Addendum

Ordinance # ____ - ____

AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND THE OFFICIAL ZONING MAP OF THE CITY OF HENDERSONVILLE FOR PARCEL POSSESSING PIN NUMBER 9568-75-5382 BY CHANGING THE ZONING DESIGNATION FROM C-2 (SECONDARY BUSINESS) TO CMU-CZD (CENTRAL MIXED USE - CONDITIONAL ZONING DISTRICT)

IN RE: Parcel Numbers: 9568-75-5382
Addresses: No Address Assigned
Southgate Apartments (File # P21-62-CZD)

WHEREAS, the City is in receipt of a Conditional Rezoning application from applicant, Suzanne Godsey and property owner, David Royster with Capitola Funds, Inc. for the development of 70 Apartments on approximately 3.63 acres, and

WHEREAS, the Planning Board took up this application at its regular meeting on April 11, 2022; voting 3-5 (motion failed) to recommend City Council adopt an ordinance amending the official zoning map of the City of Hendersonville, and

WHEREAS, the Planning Board took up this application again at its regular meeting on April 11, 2022; voting 4-4 (motion failed) to recommend City Council deny 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 May 5, 2022, 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: 9568-75-5382 from C-2 (Secondary Business) to CMU-CZD (Central Mixed Use - 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 based on the site plan submitted by the applicant and the conditions listed therein and subject to the following:
 - a. Permitted uses shall include:
 - i. Residential Dwellings, Multi-Family
 - b. Conditions that shall be satisfied prior to final site plan approval include:
 - i. The development shall be consistent with the preliminary site plan and conditions listed therein as submitted and dated April 8, 2022 [or as modified and presented].

3. This ordinance shall not be effective until the stipulated list of use(s) and conditions, established herein, is consented to in writing by the applicant and all owners of the subject property. Upon such written consent, this ordinance shall be effective retroactive to the date of its adoption.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 5th day of May, 2022.

Attest:

Barbara G. Volk, Mayor, City of Hendersonville

Angela L. Reece, City Clerk

Approved as to form:

Angela S. Beeker, City Attorney

IN RE: Parcel Numbers: 9568-75-5382
 Addresses: No Address Assigned
 Southgate Apartments (File # P21-62-CZD)

With their signatures below, the undersigned applicant(s) and property owner(s) consent to and agree to the imposition of all conditions stated.

Applicant/Developer: Suzanne Godsey, Site
Work Studio

Signature:_____

Printed Name:_____

Title: _____

Date:_____

Property Owner: David W. Royster, Capitol
Funds, Inc.

Signature:_____

Printed Name:_____

Title:_____

Date:_____

REZONING: CONDITIONAL REZONING - SOUTHGATE APARTMENTS (P21-62-CZD)
CITY OF HENDERSONVILLE - COMMUNITY DEVELOPMENT STAFF REPORT

PROJECT SUMMARY 2

EXISTING ZONING & LAND USE 3

SITE IMAGES..... 4

SITE IMAGES..... 5

SITE IMAGES..... 6

SITE IMAGES..... 7

SITE IMAGES..... 8

SITE IMAGES..... 9

REZONING HISTORY – 10

FUTURE LAND USE 11

REZONING ANALYSIS – COMPREHENSIVE PLAN CONSISTENCY (ARTICLE 11-4) 12

REZONING ANALYSIS – COMPREHENSIVE PLAN CONSISTENCY (ARTICLE 11-4) 14

REZONING ANALYSIS – GENERAL REZONING STANDARDS (ARTICLE 11-4) 15

DRAFT COMPREHENSIVE PLAN CONSISTENCY AND REZONING REASONABLENESS STATEMENT 16

STAFF SITE PLAN REVIEW – SUMMARY COMMENTS 17



PROJECT SUMMARY

- Project Name & Case #:
 - Southgate Apartments
 - P21-62-CZD
- Applicant & Property Owner:
 - David Royster III, Capitol Funds, Inc. [Owner/Developer]
 - Suzanne Godsey, Sitework Studios [Applicant]
- Property Address:
 - N/A [Behind Fresh Market / between Israel St and S. Main St]
- Project Acreage:
 - 3.63 Acres
- Parcel Identification (PIN):
 - 9568-75-5382
- Current Parcel Zoning:
 - C-2 Secondary Business
- Requested Zoning:
 - CMU-CZD (Central Mixed Use - Conditional Zoning District)
- Future Land Use Designation:
 - High Intensity Neighborhood
 - Natural Resource / Agricultural
- Neighborhood Compatibility Meeting:
 - October 21, 2021
 - October 29, 2021



SITE VICINITY MAP

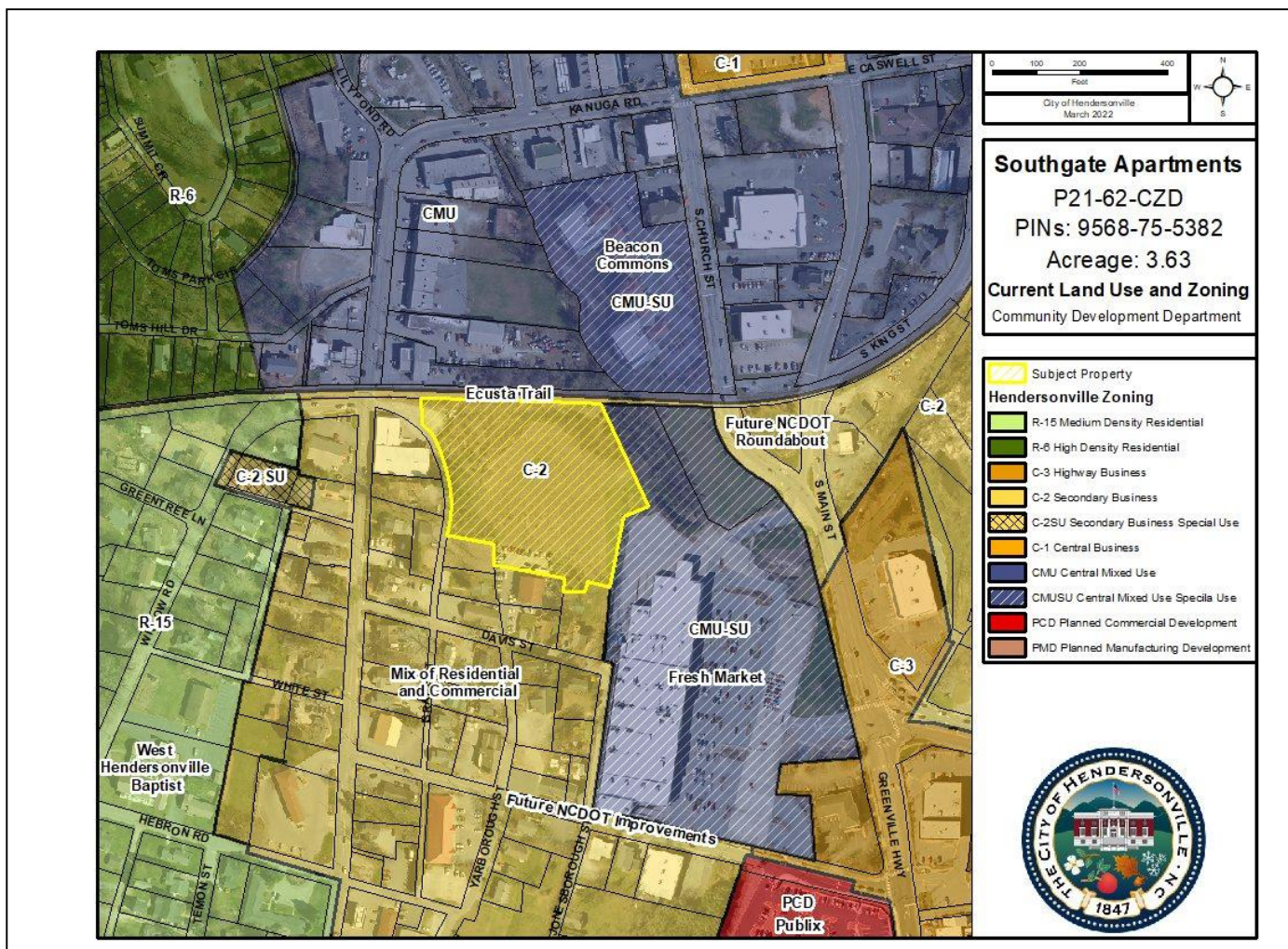
The City of Hendersonville is in receipt of an application for a Conditional Zoning District from Suzanne Godsey of Sitework Studios, applicant and David W. Royster, III of Capitol Funds, Inc., property owner. The applicants are requesting to rezone the subject property (PIN 9568-75-5382) from C-2, Secondary Business to CMU-CZD, for the construction of a 60' tall, 70-unit apartment building on approximately 3.63 acres. The Central Mixed Use district does not have a density cap.

There is one 4-story building proposed with a total of 81,897 Sq Ft (Gross Floor Area). The stated use of the site is residential, multi-family.

The site is currently vacant and contains approximately 1.44 Acres of 100-year floodplain (40%). The site features a cluster of mature trees alongside Israel St – most of which are proposed to be removed and the area will be replanted. The site had previously been occupied for outdoor storage.

This project required a conditional rezoning due to the scale of the proposed development exceeding 50,000 Sq Ft and more than 50 units.

EXISTING ZONING & LAND USE



City of Hendersonville Current Zoning

The subject parcel is within a C-2 zoning district that stretches to the south and west, extending from the west side of Kanuga Rd to the rear property boundaries of two large shopping center developments which front S. Main St. This pocket of C-2 suggests this area has been designated for residential and non-residential redevelopment. The area is currently defined by an older mix of single-family residential and small commercial uses.

To the north of the subject property, the CMU zoning runs along the future home of the Ecusta Rail Trail as it creates a perimeter around the Central Business District (C-1). The site is proposed to have access to the Ecusta Trail and is within a half mile walk of downtown.

To the east, the subject property fronts the Wash Creek floodplain and the parcel containing the Fresh Market Shopping Center (which fronts S. Main St at the intersection of Spartanburg Hwy and Greenville Hwy). The site is in close proximity to the range of uses concentrated around this intersection.

SITE IMAGES



View at western site entrance facing Kanuga Rd at Israel St



View along Israel St facing south

SITE IMAGES



View across site facing north



View across site facing west

SITE IMAGES



View of Wash Creek facing north



Existing shopping center entrance / proposed driveway to site

SITE IMAGES



View of delivery truck preparing to back in to loading dock at shopping center utilizing proposed driveway to subject property



View of future Ecusta Trail along northern boundary of site

SITE IMAGES



Confluence of Mud Creek and Wash Creek after heavy rain



Looking towards site at Wash Creek culvert / bridge crossing

SITE IMAGES



Wash Creek culvert at site – debris collected after heavy rain



REZONING HISTORY –

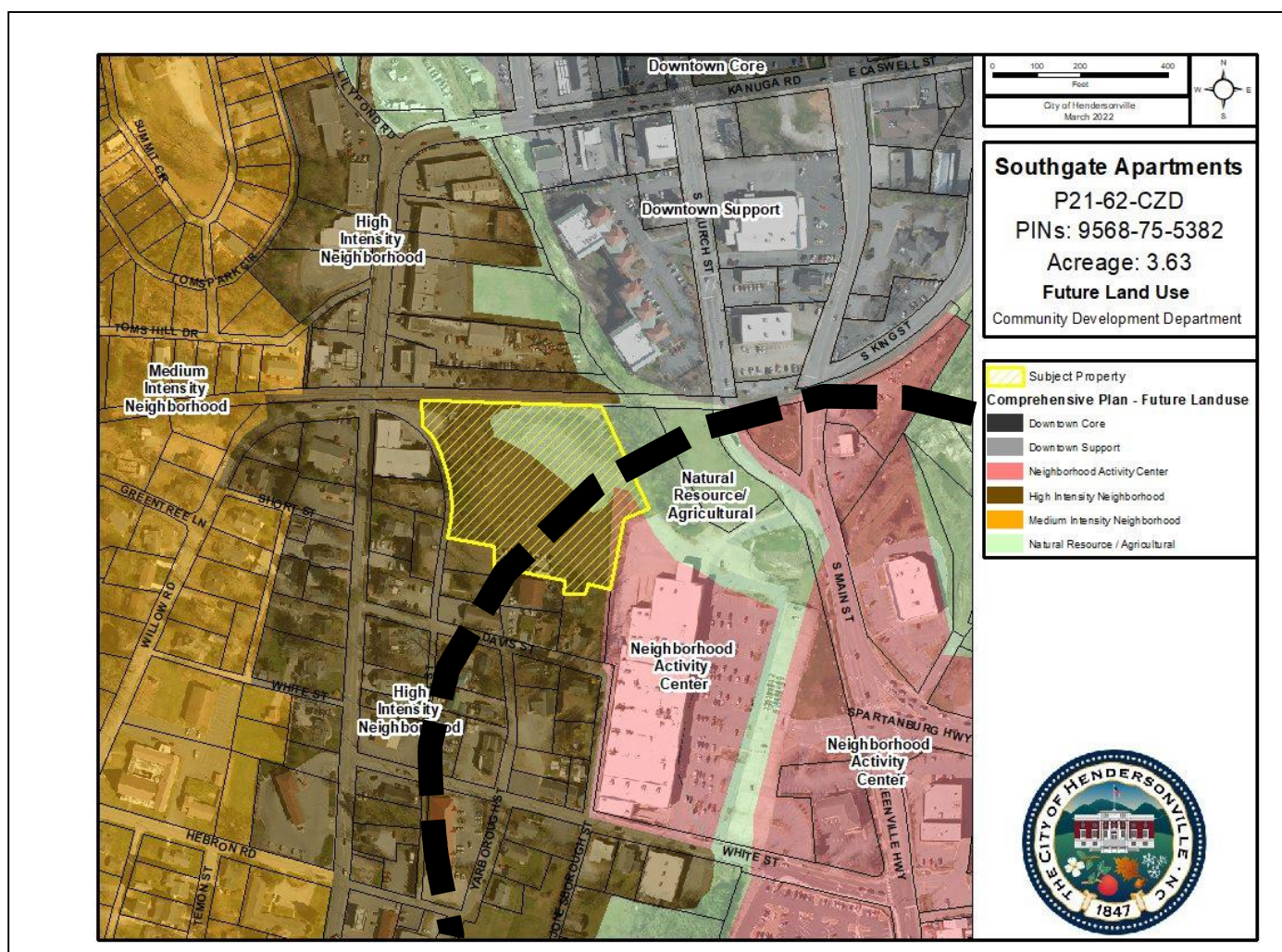
Prior Zoning	Summary of Prior Petition	Status
Unknown		

The specific previous zoning for this currently vacant parcel is unknown but we do know that the site had previously been used for minimal outdoor storage and appears to have been cleared prior to 1951.

A portion of an unimproved Right-of-Way which ran through this property (Yarborough St) was closed in 2016 (shown below).



FUTURE LAND USE



City of Hendersonville Future Land Use Map

The subject property is designated as High Intensity Neighborhood. This High Intensity Neighborhood area runs along either side of Kanuga Rd from Lilly Pond Rd to Hebron Rd. The subject property also contains a Natural Resource / Agricultural designation for the area of the property within the 100 yr floodplain / floodway. Finally, the parcel is partially within an Activity Node centered around the intersection of S. Main St, Spartanburg Hwy and Greenville Hwy. Adjacent to the property and centered within the activity node is a Neighborhood Activity Center designation. The Downtown Support designation begins to the northeast of the subject property, across Wash Creek.

REZONING ANALYSIS – COMPREHENSIVE PLAN CONSISTENCY (ARTICLE 11-4)

COMPREHENSIVE PLAN CONSISTENCY

Future Land
Use

Goal LU-7 - High Intensity Neighborhood: 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 [consistent]

Strategy LU-7.1. Locations:

- Existing or planned high-density housing neighborhoods (greater than eight units per acre) [CONSISTENT]
- Priority infill development areas where high-density development is desirable and/or expected, including: [CONSISTENT]
 - o Boulevard and Major Thoroughfare corridors near Neighborhood Activity Centers [CONSISTENT]
 - o Neighborhoods near Downtown, excluding historic neighborhoods [consistent]

Strategy LU-7.2. Primary recommended land uses:

- Multi-family residential [CONSISTENT]

Strategy LU-7.4. Development guidelines:

- Eight or more units per gross acre [CONSISTENT]
- 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 [CONSISTENT]
- At least 60% open space in new residential developments greater than three acres [INCONSISTENT]
- 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) [CONSISTENT]
- Encouragement of walkable neighborhood design, as described under Goal PH-3 in Chapter 2 [LIMITED CONSISTENCY]

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:

- The FEMA 100-year Floodplain

Strategy LU-4.2. Primary recommended land uses:

- Open space [CONSISTENT]
- Recreational amenities [CONSISTENT]
- Low-impact stormwater management facilities [CONSISTENT]
- Flood storage [CONSISTENT]

Strategy LU-4.4. Development guidelines:

- Preservation and restoration of natural hydrology [INCONSISTENT] Parking & grading is proposed to occur within the existing floodplain.
- Encouragement of Low-Impact Development principles [CONSISTENT]
- Development of non-motorized pathways [CONSISTENT]
- Residential uses limited to one unit per gross acre or less with at least 60% open space [CONSISTENT]

<p>Land Use & Development</p>	<p>Growth Management: Designated as a “Priority Infill Area” (Map 8.3a) - 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 [CONSISTENT]</p> <p>Goal LU-1. Encourage infill development that utilizes existing infrastructure in order to maximize public investment and revitalize existing neighborhoods. Strategy LU-1.1. Encourage infill development and redevelopment in areas planned for high-intensity development, as indicated by the “Priority Infill Areas” on Map 8.3a. [CONSISTENT] <u>Infill development:</u> Development that takes place within existing neighborhoods, making maximum use of the existing infrastructure instead of building on previously undeveloped land. -Centers for Disease Control and Prevention, Healthy Places Terminology Examples of opportunities for infill development include: • Scattered vacant lots • Underutilized commercial properties</p>
<p>Population & Housing</p>	<p>Strategy PH-1.1 – Promote compatible infill development</p> <p>Strategy PH-2.2 – Encourage provision of affordable housing units in new developments.</p> <p>Strategy PH-3.2 - Encourage mixed land use patterns that place residents within walking distance of services.</p>
<p>Natural & Environmental Resources</p>	<p>Goal NR-1 - Preserve environmentally sensitive areas in order to protect life and property from natural hazards, protect water resources, and preserve natural habitat. Strategy NR-1.1. - Discourage and reduce development of structures and impervious surfaces within the FEMA Floodway and 100-Year Floodplain. Strategy NR-1.2. Protect land adjacent to streams in order to protect water quality, reduce erosion, and protect wildlife habitat. Strategy NR-1.3. Encourage restoration of natural habitat and drainage patterns in developed areas.</p> <p>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-2.1. Encourage clustered development that preserves open space while allowing a return on investment. Clustering homes on smaller lots, or clustering commercial development in multi-story buildings, preserves open space without sacrificing housing units or leasable floor area. Zoning regulations can encourage such development by avoiding minimum lot area standards and promoting flexibility in design 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 3.3.c. 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.</p>

REZONING ANALYSIS – COMPREHENSIVE PLAN CONSISTENCY (ARTICLE 11-4)

COMPREHENSIVE PLAN CONSISTENCY	
Cultural & Historic Resources	There are no Goals, Strategies, or Actions that are directly applicable to this petition.
Community Facilities	<i>Strategy CF-3.1. Balance investment in new park space and amenities with anticipated maintenance resources.</i>
	<i>Strategy CF-6.1. Encourage community open-space or play areas in new or redeveloped residential neighborhoods.</i>
	<i>Strategy CF-7.2. Preserve and expand the public greenway system as a means of connecting neighborhoods to parks and increasing recreational amenities and open space.</i>
Water Resources	The proposed project would be serviced by City Water and Sewer.
	<i>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.</i>
Transportation & Circulation	The project is located on a Major Thoroughfare (S. Main St) according to Map 7.3a.
	<i>Strategy TC-1.1. Encourage mixed-use, pedestrian-friendly development that reduces the need to drive between land uses.</i>
	<i>Strategy TC-1.2. Identify and prioritize needed pedestrian connections within the community.</i>
	<i>Strategy TC-1.4. Encourage pedestrian connections between dead end streets and adjacent neighborhoods.</i>
	<i>Strategy TC-2.2. Preserve and expand the public greenway system as a core component of the bicycle and pedestrian transportation system.</i>
	<i>Strategy TC-2.4. Encourage bicycle parking facilities at key destinations. Providing secure parking facilities for bicycles is an important component in creating a convenient bicycling infrastructure and promoting bicycle usage</i>
	<i>Strategy TC-3.1. Continue to develop and require a <u>connected</u> street grid.</i>
	<i>Goal TC-5. Enhance key gateways to the community in order to present a positive first impression and increase civic pride.</i>
	<i>Strategy TC-5.2. Enhance key entrances within the City</i>

REZONING ANALYSIS – GENERAL REZONING STANDARDS (ARTICLE 11-4)

GENERAL REZONING STANDARDS	
Compatibility	Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject property -
	There are a wide range of uses and levels of intensity in the area surrounding the parcel. The property is in immediate proximity to the intersection of Spartanburg Highway and S. Main St. and in close proximity to Downtown. As such high density multi-family residential appears to be compatible as a use. The current C-2 zoning for the parcel permits high intensity uses.
Changed Conditions	Whether and the extent to which there are changed conditions, trends or facts that require an amendment -
	The southern end of Hendersonville has continued to develop as a key commercial node for the City with a wide range of groceries, restaurants, retail shops, services and high density residential. The acquisition, design and construction of the Ecusta Trail will greatly enhance the visibility of and access to this site by non-motorized transportation.
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 -
	The proposed 70 residential units would provide needed additional housing units while making efficient use of land (19.2 Units/Acre) within walking distance to a number of opportunities for employment, shopping, and recreation.
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 -
	A Water / Sewer Availability Request has been submitted for this project. An extension of public water and sewer is required to serve the proposed project. The development team provided a TIA to identify any needed mitigation based on a recommendation from City staff although the project was under the threshold for triggering a TIA based on projected daily trips.
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 -
	Floodplain Considerations: The proposed development would impact, via parking and drives, approximately 25% of the subject property's floodplain. The developer proposes to offset the proposed fill with a bio-retention stormwater facility. The 20' Stream Buffer Transition Zone has an existing encroachment of impervious pavement which would be utilized by the proposed development as part of the driveway/access. 17 of 21 mature trees on the site are proposed to be removed (6 evergreens and 11 hardwoods). Portions of the site have a "moderate" ranking for biodiversity.

DRAFT COMPREHENSIVE PLAN CONSISTENCY AND REZONING REASONABLENESS STATEMENT

The petition is found to be **consistent** with the City of Hendersonville 2030 Comprehensive Plan based on the information from the staff analysis and because:

The High Intensity Neighborhood designation calls for Multi-Family Residential as a primary land use and the proposed site plan aligns with a majority of development guidelines listed under LU 7.4.

We find this petition to be reasonable and in the public interest based on the information from the staff analysis and the public hearing, and because:

DRAFT [Rationale for Approval]

- *The petition is located in a Priority Infill Area which recommends redevelopment of underutilized lots*
- *The petition provides infill development utilizing existing infrastructure*
- *The petition provides additional housing in close proximity to downtown and the future Ecusta Trail and in close proximity to goods and services*
- *The petition provides a transition from uses of high intensity to lower intensity uses*
- *The existing C-2 zoning provides a wide range of high intensity commercial uses including car washes, automobile and farm equipment sales, hotels, animal hospitals, service stations, and small-scale manufacturing by right up to 50,000 Sq Ft. The petition for multi-family housing in the CMU District provides greater compatibility with surrounding land uses than other potential by-right developments.*
- *The proposed development provides access from a major thoroughfare*

DRAFT [Rational for Denial]

- *The petition would add an additional 67,225 Sq Ft of buildings, parking lots and streets to a parcel, a portion of which is currently utilized for flood storage. This would make 48.7% of the site impervious.*
- *The scale, massing and/or architectural design of the proposed building is not compatible with existing character of the neighborhood between Israel St and Kanuga Rd.*
- *Israel St is a substandard local street which is not designed to accommodate additional traffic.*
- *17 of 21 mature trees on the site will be removed.*

STAFF SITE PLAN REVIEW – SUMMARY COMMENTS**PROPOSED REQUEST DETAILS**

- The site plan accompanying this petition contains the following provisions:
 - 70-Unit Apartment Development on 3.63 Acres (Density = 19.3 Units/Acre)
 - 1 – 4-story building (60' Height)
 - 81,897 Sq Ft of Gross Floor Area
 - Development in 100-Year Floodplain
- Requested Uses:
 - Residential, Multi-Family
- Developer Conditions:
 - Developer Proposed Concessions:
 - Provide additional 44 Trees and 78 Shrubs
 - Developer Proposed Conditions:
 - Request Fee-in-lieu of sidewalks along Israel St
 - Request to eliminate the required 12'x40' loading zone space due to floodplain constraints
 - Several modification requests from Article XVII – Natural Resource Protection Standards of the Zoning Ordinance are necessary for this project due to its unique boundary configuration, existing slope, extent of floodplain on the parcel and conflicts in providing handicap accessibility to the buildings that area required to be raised 2' above base flood elevation while also required to keep all parking allowed in the floodplain at the existing grade (4'+/- grade differential) and where no fill is allowed. The specific modifications will be listed on final plans for recordation and approval. Requested modifications are as follows:
 - Sec. 17-2-2 b) - Request to fill 4' within the floodplain for 5,000 Sq Ft area of parking. This is necessary to ensure ADA connections between the building which has a fixed finished floor elevation due to requirement to be 2' above Base Flood Elevation and the parking lot in front of the building. To compensate for the fill, we will have an in-ground SCM (cell/pond) that will remove fill from the floodplain equal to the fill needed to raise the parking lot.
 - Sec. 17-2-2 c) - We are proposing two entrances for the project, both involve drive aisle that will be located and filling within the floodplain. These entrances need to be located as shown due to the narrowness of the remaining area outside of the floodplain, where the building and parking designs are fixed. The two-entrance layout provides needed fire access, and encourages connectivity to both the shopping center and the Kanuga Rd commercial area. Furthermore, these entrances are proposed to be parallel to the stream/floodplain as much as possible while still providing adequate access connections.

OUTSTANDING ISSUES & PROPOSED CONDITIONS:

COMMUNITY DEVELOPMENT

Site Plan Comments

- The site plan accompanying this petition meets the standards established by the Zoning Ordinance for Central Mixed Use (5-19) and Site Plan Review (7-3) with the following exceptions:
 - Pervious concrete proposed for sidewalk in Stream Buffer Transition Area.
 - Sidewalk from site to Israel St not provided
- Staff proposed the following as it related to potential improvements to the site plan which would further align the project with the goals of the Comprehensive Plan. The following proposals were not accepted by the Developer:
 - As an alternative to the amount of development/impervious surface proposed in the floodplain, staff advocated that a portion of the parking for the site be located under the 1st floor of the building.
 - Similarly, staff proposed that the development utilize the existing parking for the Southgate shopping center through a shared parking agreement for any parking in excess of the minimum parking requirements for the proposed apartments.
 - Staff proposed that they reduce their parking total to align with the minimum parking requirements of the zoning ordinance.
 - Staff proposed that they eliminate the gates to the development to provide better interconnectivity.
 - Staff proposed that the developer construct a sidewalk connecting the development to existing sidewalks on Kanuga Rd in lieu of 200' linear feet of sidewalks that would be part of the proposed fee-in-lieu of sidewalks along Israel St.
 - Staff proposed orienting the buildings along the Ecusta Trail. Floodplain issues made this infeasible.
 - Staff proposed that the single building be broken up into multiple buildings with smaller footprints to create greater compatibility.

Proposed City-Initiated Conditions:

- Developer to install trail connection from Ecusta Trail to shopping center and dedicate to the City. [developer agreed]

CITY ENGINEER

Site Plan Comments

- Show easement for existing sanitary sewer. No tree planting within sewer easement. [resolved]
- Storm outfall is shown exiting at existing sewer - adjust so there is no washout. [resolved]
- Shift fence outside of sewer easement [resolved]

Proposed City-Initiated Conditions:

- None

WATER / SEWER**Site Plan Comments:**

- None

Proposed City-Initiated Conditions:

- None

FIRE MARSHAL**Site Plan Comments**

- Reduce size of landscaped/entrance island at Israel St access to ensure fire access.

Proposed City-Initiated Conditions:

- None

STORMWATER ADMINISTRATOR**Site Plan Comments**

- The culvert at the confluence of Wash Creek/Mud Creek is undersized. That culvert is by far the smallest diameter culvert on the whole reach of Mud Creek from Laurel Park to the confluence. Every other crossing is either a bridge, double or triple box culvert w/ 6'x4' boxes, and the culvert at Fresh Market is a single 72" round pipe, 30% of which is filled w/ sediment. The current stream crossing on Wash Creek at the eastern entrance to the development is not designed to convey the 25-year storm event without overtopping (NCDOT Standards require all minor roads/local road stream crossings to be able to convey the 25-year event).

Based on past storm events this entrance is likely to be inundated at least twice a year, limiting the development to the single entrance onto Israel St. Additionally, climate models for this region show a high likelihood of increasing frequency of severe rainfall and overall increased precipitation, which would lead to more situations in which Southgate residents are being isolated by flood conditions. While this development is not responsible for causing flooding in this area, it will contribute to the peak flow in Wash Creek upstream of the culvert, further increasing the possibility of the eastern entrance becoming inaccessible during severe rain events.

The applicant is requesting conditional approval for placing additional fill in the immediate vicinity of the culvert, which will decrease the flood storage area above the culvert and potentially cause more frequent inundation of this crossing. While the proposed development is not responsible for the condition of this culvert, it will have additional impacts on the culvert. Furthermore, the proposed development will be impacted directly by the function of this culvert. Staff discussed replacement of the culvert replacement with the developer who proposed as an alternative the maintenance and cleaning of the existing infrastructure. This proposal to "maintain" the culvert under the condition that, it does not require additional permitting, does not address the current limitations of the culvert's performance.

Proposed City-Initiated Conditions:

- None

FLOODPLAIN ADMINISTRATOR**Site Plan Comments**

- Sufficient separate from seasonal high-water table needed for proposed Stormwater Control Measure.
- Due to the proposed development in the floodplain and the requested developer proposed conditions, staff requested that a preliminary flood study be provided. The conclusion of the Preliminary Flood Study Memo is as follows:
 - Andrew Bick, PE, CFM - *Based on our preliminary analyses, the proposed grading appears to be feasible in terms of not causing adverse flooding impacts. A floodplain development permit application to the City would need to include hydraulic modeling of the final site plan and a detailed summary report. These preliminary analyses can serve as the basis of this final study*

Proposed City-Initiated Conditions:

- Provide information related to seasonal high-water table. [developer agreed]
- Response to Developer Proposed Condition: Provide flood study/engineering analysis prior to Final Site Plan approval to determine impact of proposed development to subject property and properties upstream and mitigate / revise site plan as needed. No impact / increased flood hazard on existing or proposed structures shall be permitted. [developer agreed]
- Provide flood study/engineering analysis for all work done within floodway. [developer agreed]

PUBLIC WORKS**Site Plan Comments**

- Additional information on delivery truck scheduled needed [see below]

Proposed City-Initiated Conditions:

- None

NCDOT**Site Plan Comments**

- None

Proposed City-Initiated Conditions:

- None

TRANSPORTATION CONSULTANT

The proposed development is anticipated to generate 465 Daily Trips, 29 AM peak hour trips, and 37 PM peak hour trips per the ITE Trip Generation Manual, 10th Edition. This falls below the City's Threshold for triggering a TIA (Section 6-18). A TIA was

recommended, but not required for this development. The City's Transportation Consultant (Jonathan Guy, Kimley-Horn) provided the following feedback on the TIA submitted by the development team:

- ***Based on a technical review of the revised TIA report as submitted, several elements of the report and analysis do not address comments provided by Kimley-Horn on February 10, 2022. These unaddressed comments are summarized in the bulleted list below, with the relative impact on the analysis results and recommendations noted in brackets*** [Planning Staff has provided the bullet points from the TIA Review Memo which have a rating of Moderate Impact and High Impact as noted in the brackets]:
 - *A turn lane warrant analysis was not conducted for the existing unsignalized intersections of Kanuga Road with Israel Street and NC 225 (S Main Street) with S Church Street/Fresh Market Shops Driveway. A turn lane warrant analysis should be completed at these locations or justification for their exclusion should be provided in the TIA report text. [Moderate Impact]*
 - *Consider revising the site plan or otherwise including improvements to Israel Street between the proposed site access point and Kanuga Road to address sight distance deficiencies and provide additional pavement width for two-way traffic. [Moderate Impact]*
- ***The following additional comments are offered based on a review of the revised TIA against NCDOT and City of Hendersonville guidelines and should be addressed as appropriate:***
 - *In Figure 11 and Figure 12, it is not clear how 2040 No-Build and 2040 Build traffic volumes were derived. NCDOT Traffic Breakouts should be provided as an attachment to the TIA, and a separate trip distribution figure should be developed in the context of the 2040 roadway network. [Moderate Impact]*
 - *NCDOT Congestion Management's Capacity Analysis Guidelines specify that a TIP Design Year Analysis, when applicable, should be conducted for all study intersections. The 2040 NoBuild and 2040 Build analyses should be revised to include all study intersections or justification for their exclusion should otherwise be provided. [Moderate Impact]*

In addition to the requested technical revisions to the report, recommendations related to addressing conflicts with delivery trucks entering the entrance area of the site have been provided to the applicant. The delivery schedule for Southgate is as follows:

- PetSmart (large trucks): Deliveries 2X/week, Mon. and Fri. between 7am-1pm
- Fresh Market (smaller trucks): Deliveries daily Mon-Sat between 6am-3pm

Proposed City-Initiated Conditions:

- Revise TIA accordingly [developer agreed]
- Revise site plan to accommodate recommended Alternative for entrance / loading dock access. [developer agreed]

ZONING NOTES:

1. ALL PROPOSED ENTRANCE AND EXIT POINTS SHALL FOLLOW THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION'S "POLICY ON STREET AND DRIVEWAY ACCESS TO NC HIGHWAYS".
2. ENTIRE PROPERTY IS WITHIN THE CITY LIMITS.
3. SITE LIGHTING WILL BE PROVIDED BY DUKE ENERGY AND WILL COMPLY WITH ANY CITY OF HENDERSONVILLE'S LIGHTING STANDARDS (SECTION 6-13-4).
4. THE 30' STREAM BUFFER FOR WASH CREEK IS OUTSIDE OF THIS DEVELOPMENT'S PROPERTY BOUNDARIES.
5. OPEN SPACE WILL BE MAINTAINED BY THE APARTMENT MANAGEMENT COMPANY.
6. DUMPSTER ENCLOSURE WILL FULLY SCREEN THE DUMPSTERS AND WILL INCLUDE ARCHITECTURAL MATERIALS INTO THE DESIGN/DETAILS.

CONDITIONAL ZONING CONDITIONS:

1. DEVELOPER TO INSTALL TRAIL CONNECTION FROM ECUSTA TRAIL TO SHOPPING CENTER AND DEDICATE TO THE CITY AND PROVIDE EASEMENT TO THE CITY FOR MAINTENANCE. ANY ADDITIONAL PERMITTING RELATED TO TRAIL WILL BE COMPLETED BY OTHERS.
2. PROVIDE INFORMATION RELATED TO SEASONAL HIGH-WATER TABLE;
3. PROVIDE FLOOD STUDY/ENGINEERING ANALYSIS PRIOR TO FINAL SITE PLAN APPROVAL TO DETERMINE IMPACT OF PROPOSED DEVELOPMENT TO SUBJECT PROPERTY AND PROPERTIES UPSTREAM AND MITIGATE / REVISE SITE PLAN AS NEEDED. NO IMPACT / INCREASED FLOOD HAZARD ON EXISTING OR PROPOSED STRUCTURES SHALL BE PERMITTED;
4. PROVIDE FLOOD STUDY/ENGINEERING ANALYSIS FOR ALL WORK DONE WITHIN FLOODWAY;
5. REVISE TIA ACCORDING TO COMMENTS RECEIVED FROM CITY'S TRANSPORTATION CONSULTANT; (REPORT IS ALREADY REVISED.)
6. REVISE SITE PLAN TO ACCOMMODATE RECOMMENDED ALTERNATIVE FOR ENTRANCE / LOADING DOCK ACCESS. (PLANS ARE REVISED AND PART OF SHEET L-200.)
7. PROVIDE ADDITIONAL 44 TREES AND 78 SHRUBS.
8. REQUEST FEE-IN-LIEU OF SIDEWALK ALONG ISRAEL STREET (SECTION 6-12-3).
9. REQUEST TO ELIMINATE THE REQUIRED 12'X40' LOADING ZONE SPACE DUE TO FLOODPLAIN CONSTRAINTS (SECTION 6-6).
10. SEVERAL MODIFICATION REQUESTS FROM THE FLOOD STANDARDS OF THE ZONING ORDINANCE ARE NECESSARY FOR THIS PROJECT DUE TO ITS UNIQUE BOUNDARY CONFIGURATION, EXISTING SLOPE, EXTENT OF FLOODPLAIN ON THE PARCEL AND CONFLICTS IN PROVIDING HANDICAP ACCESSIBILITY TO THE BUILDINGS THAT AREA REQUIRED TO BE RAISED 2' ABOVE BASE FLOOD ELEVATION WHILE ALSO REQUIRED TO KEEP ALL PARKING ALLOWED IN THE FLOODPLAIN AT THE EXISTING GRADE (4'+/- GRADE DIFFERENTIAL) AND WHERE NO FILL IS ALLOWED. THE SPECIFIC MODIFICATIONS WILL BE LISTED ON FINAL PLANS FOR RECORDATION AND APPROVAL. REQUESTED MODIFICATIONS ARE AS FOLLOWS:

- a) SEC. 17-2-2 B) - REQUEST TO FILL 4' WITHIN THE FLOODPLAIN FOR A PARKING AREA OF 5,000 SQ FT. THIS IS NECESSARY TO ENSURE ADA CONNECTIONS BETWEEN THE BUILDING AND THE PARKING LOT IN FRONT OF THE BUILDING. FLOOD REGULATIONS REQUIRE THE FINISHED FLOOR ELEVATION TO BE 2' ABOVE BASE FLOOD ELEVATION AND THE EXISTING GRADE IS 4' BELOW SAID ELEVATION. FILLING IN THIS SMALL AREA WILL ALLOW FOR ADA COMPLIANCE FOR PARKING AND ACCESS.
- b) SEC. 17-2-2 C) - WE ARE PROPOSING TWO ENTRANCES FOR THE PROJECT, BOTH INVOLVE DRIVE AISLES THAT WILL BE PARTIALLY LOCATED WITHIN THE FLOODPLAIN. THESE ENTRANCE DRIVES NEED TO BE LOCATED AS DESIGNED DUE TO THE NARROWNESS OF THE REMAINING LAND OUTSIDE OF THE FLOODPLAIN, AS THE BUILDING AND PARKING LOCATIONS ARE "FIXED". THE TWO-ENTRANCE LAYOUT PROVIDES REQUIRED EMERGENCY ACCESS TO AND THROUGH THE SITE AS WELL AS ENCOURAGES TENANT CONNECTIVITY TO BOTH THE SHOPPING CENTER AND THE KANUGA RD COMMERCIAL AREA FOR DISPERSION OF TRAFFIC. FURTHERMORE, THESE ENTRANCES ARE PROPOSED TO BE PARALLEL TO THE STREAM/FLOODPLAIN AS MUCH AS PRACTICAL GIVEN THE FLOODPLAIN DEMARCATION LINE WHILE STILL PROVIDING ADEQUATE ACCESS.
- c) SEC. 17-2-2 D) - WE ARE LOOKING TO DEVELOP APPROXIMATELY 25% OF THE FLOODPLAIN AREA CONTAINED WITHIN THE PARCEL AS CURRENTLY PLATTED. THIS IS NECESSARY DUE TO THE NARROWNESS AND STEEP TOPOGRAPHY OF THE REMAINING DEVELOPABLE AREA OUTSIDE OF THE FLOODPLAIN. THERE IS A LARGE FLOODWAY AREA AROUND WASH CREEK THAT COULD POTENTIALLY BE ADDED TO THE SITE ACREAGE, DROPPING THE PERCENTAGE OF ON-SITE FLOODPLAIN AREA THAT WILL BE IMPACTED. THIS WOULD BE DONE PER A LAND RECOMBINATION AND WOULD BE SOLELY A LOGISTICAL EXERCISE THAT WOULD NOT IMPROVE THE DESIGN. ALSO NOTE THAT THE EXISTING SITE IS NOT AN UNDEVELOPED, PRISTINE, PROPERTY. ALTHOUGH IT HASN'T HAD A PREVIOUS BUILDING ON IT, THE SITE HAS BEEN A CONSTRUCTION STAGING AREA FOR DECADES, THE GRADE HAS BEEN CHANGED AND MOST OF THE PARCEL HAS BEEN CLEARED OR DISTURBED MULTIPLE TIMES OVER THE YEARS.

11. PLANT SLOPE AREA WITH DIVERSE AND APPROPRIATE SPECIES OF NATIVE UPLAND SMALL MATURING OR UNDERSTORY TREES, SHRUBS (BOTH WITH PROPER SPACING) AND HERBACEOUS PLANTS.
12. ALL PRESERVED TREES MUST BE PROTECTED FROM CONSTRUCTION ACTIVITIES AS PRESCRIBED IN THE ZONING CODE 15-4C REGARDLESS OF USE FOR TREE CREDIT.
13. ATTEMPT TO ERADICATE INVASIVE PLANT SPECIES FOUND ON PROPERTY AS LISTED IN THE RECOMMENDED LANDSCAPE SPECIES LIST FOR STREET TREES AND LAND DEVELOPMENT PROJECTS, WHILE PROTECTING ENVIRONMENTALLY SENSITIVE AREAS AND AQUATIC BUFFERS.

PROPERTY OWNER:
CAPITOL FUNDS, INC.
P.O. BOX 144
SHELBY, NC 28151

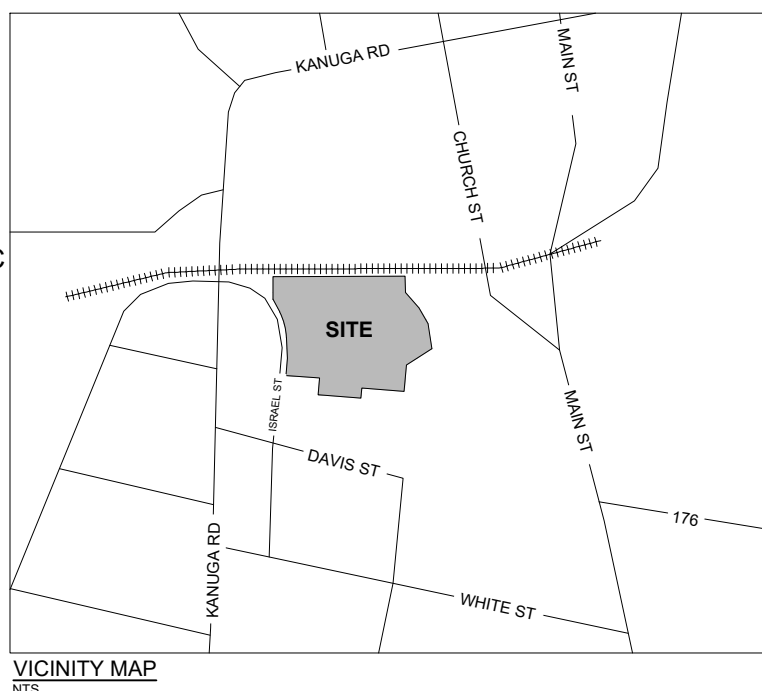
DEVELOPER CONTACT:
SELWYN PROPERTY GROUP, INC
ATTN: JENSIE TEAGUE
4310 PARK ROAD, SUITE 101
CHARLOTTE, NC 28209

LANDSCAPE ARCHITECT:
SUZANNE GODSEY, PLA
SITEWORK STUDIOS, PLLC
82 PATTON AVENUE, SUITE 700
ASHEVILLE, NC 28801
828.225.4945

ARCHITECT:
ROBIN RAINES, AIA
ROWHOUSE ARCHITECTS
1 NORTH PACK SQUARE
ASHEVILLE, NC 28801
828.281.2344

CIVIL ENGINEER:
CHRIS DAY, PE
CIVIL DESIGN CONCEPTS, PA
168 PATTON AVENUE
ASHEVILLE, NC 28801
828.252.5388

SURVEYOR:
ERIC MACBEE, PLS
MACBEE & ASSOCIATES, PA
3 MACBEE TRAIL
FAIRVIEW, NC 28730
828.628.1295



ZONING:
CURRENT ZONING: C-2 SECONDARY BUSINESS
PROPOSED ZONING: CMUC2D - CENTRAL MIXED USE
CONDITIONAL ZONING DISTRICT CLASSIFICATION

PROPOSED USE: 70 APARTMENTS

PIN: 9568-75-5382

SIZE OF PROPERTY: 3.63 AC
DENSITY: 19.2 UNITS/ACRE

EXISTING IMPERVIOUS SURFACE:
346 SF (0.008 ACRES)
0.3% OF SITE

PROPOSED IMPERVIOUS SURFACE:
77,034 SF (1.77 ACRES)
48.7% OF SITE

SETBACKS:
FRONT: 12' MINIMUM
SIDE/ REAR: 0'

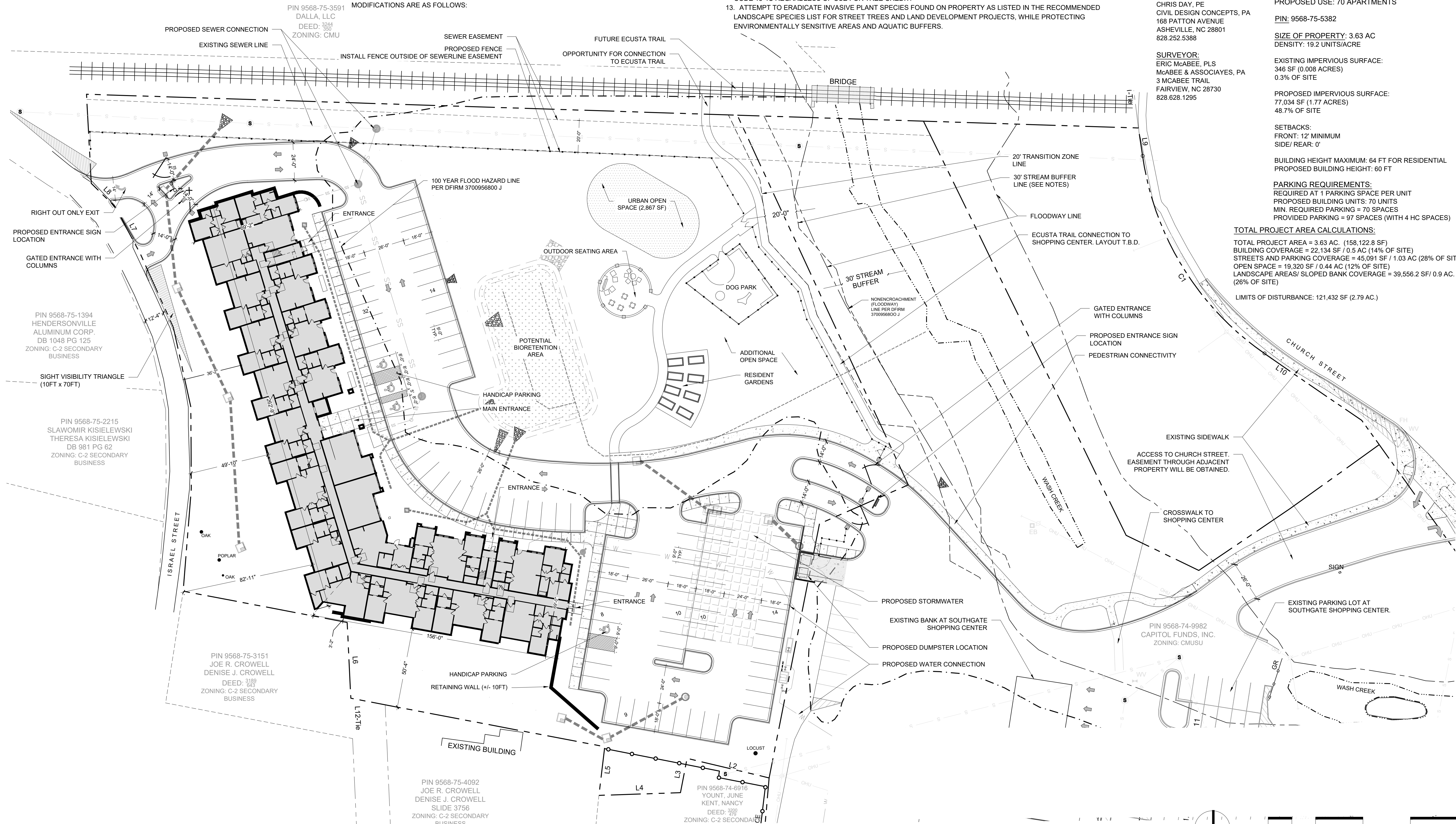
BUILDING HEIGHT MAXIMUM: 64 FT FOR RESIDENTIAL
PROPOSED BUILDING HEIGHT: 60 FT

PARKING REQUIREMENTS:
REQUIRED AT 1 PARKING SPACE PER UNIT
PROPOSED BUILDING UNITS: 70 UNITS
MIN. REQUIRED PARKING = 70 SPACES
PROVIDED PARKING = 97 SPACES (WITH 4 HC SPACES)

TOTAL PROJECT AREA CALCULATIONS:

TOTAL PROJECT AREA = 3.63 AC. (158,122.8 SF)
BUILDING COVERAGE = 22,134 SF / 0.5 AC (14% OF SITE)
STREETS AND PARKING COVERAGE = 45,091 SF / 1.03 AC (28% OF SITE)
OPEN SPACE = 19,320 SF / 0.44 AC (12% OF SITE)
LANDSCAPE AREAS/ SLOPED BANK COVERAGE = 39,556.2 SF / 0.9 AC.
(26% OF SITE)

LIMITS OF DISTURBANCE: 121,432 SF (2.79 AC.)



Section 7, Item E.

sitework STUDIOS

LANDSCAPE ARCHITECTURE
82 Patton Avenue | Suite 700 | Asheville, NC 28801 | 828.225.4945

NOT FOR CONSTRUCTION

PREPARED FOR:
CAPITOL FUNDS, INC.
P.O. BOX 144
SHELBY, NORTH CAROLINA 28151

SOUTHGATE APARTMENTS

REVISIONS

NO.	REMARKS	DATE
1	CITY COMMENTS	03.03.2022
2	CITY COMMENTS	03.25.2022
3	CZ CONDITIONS	04.08.2022

CONDITIONAL ZONING REVIEW

DATE:
04.08.2022

SHEET TITLE:
PRELIMINARY SITE PLAN

SHEET NO.
L-200

1. ALL PROPOSED ENTRANCE AND EXIT POINTS SHALL FOLLOW THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION'S "POLICY ON STREET AND DRIVEWAY ACCESS TO NO HIGHWAYS".
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10. SEVERAL MODIFICATION REQUESTS FROM THE FLOOD STANDARDS OF THE ZONING ORDINANCE ARE NECESSARY FOR THIS PROJECT DUE TO ITS UNIQUE BOUNDARY CONFIGURATION, EXISTING SLOPE, EXTENT OF FLOODPLAIN ON THE PARCEL AND CONFLICTS IN PROVIDING HANDICAP ACCESSIBILITY TO THE BUILDINGS THAT AREA REQUIRED TO BE RAISED 2' ABOVE BASE FLOOD ELEVATION WHILE ALSO REQUIRED TO KEEP ALL PARKING ALLOWED IN THE FLOODPLAIN AT THE EXISTING GRADE (4'+/- GRADE DIFFERENTIAL) AND WHERE NO FILL IS ALLOWED. THE SPECIFIC MODIFICATIONS WILL BE LISTED ON FINAL PLANS FOR RECORDATION AND APPROVAL. REQUESTED MODIFICATIONS ARE AS FOLLOWS:

- a) SEC. 17-2-2 b) - REQUEST TO FILL 4' WITHIN THE FLOODPLAIN FOR A PARKING AREA OF 5,000 SQ FT. THIS IS NECESSARY TO ENSURE ADA CONNECTIONS BETWEEN THE BUILDING AND THE PARKING LOT IN FRONT OF THE BUILDING. FLOOD REGULATIONS REQUIRE THE FINISHED FLOOR ELEVATION TO BE 2' ABOVE BASE FLOOD ELEVATION AND THE EXISTING GRADE IS 4' BELOW SAID ELEVATION. FILLING IN THIS SMALL AREA WILL ALLOW FOR ADA COMPLIANCE FOR PARKING AND ACCESS.
- b) SEC. 17-2-2 c) - WE ARE PROPOSING TWO ENTRANCES FOR THE PROJECT, BOTH INVOLVE DRIVE AISLES THAT WILL BE PARTIALLY LOCATED WITHIN THE FLOODPLAIN. THESE ENTRANCE DRIVES NEED TO BE LOCATED AS DESIGNED DUE TO THE NARROWNESS OF THE REMAINING LAND OUTSIDE OF THE FLOODPLAIN. AS THE BUILDING AND PARKING LOCATIONS ARE "FIXED", THE TWO-ENTRANCE LAYOUT PROVIDES REQUIRED EMERGENCY ACCESS TO AND THROUGH THE SITE AS WELL AS ENCOURAGES TENANT CONNECTIVITY TO BOTH THE SHOPPING CENTER AND THE KANUGA RD COMMERCIAL AREA FOR DISPERSION OF TRAFFIC. FURTHERMORE, THESE ENTRANCES ARE PROPOSED TO BE PARALLEL TO THE STREAM/FLOODPLAIN AS MUCH AS PRACTICAL GIVEN THE FLOODPLAIN DEMARCATION LINE WHILE STILL PROVIDING ADEQUATE ACCESS.

11. PLANT SLOPE AREA WITH DIVERSE AND APPROPRIATE SPECIES OF NATIVE UPLAND SMALL MATURING OR UNDERSTORY TREES, SHRUBS (BOTH WITH PROPER SPACING) AND HERBACEOUS PLANTS.
12. ALL PRESERVED TREES MUST BE PROTECTED FROM CONSTRUCTION ACTIVITIES AS PRESCRIBED IN THE ZONING CODE 15-4C REGARDLESS OF USE FOR TREE CREDIT.
13. ATTEMPT TO ERADICATE INVASIVE PLANT SPECIES FOUND ON PROPERTY AS LISTED IN THE RECOMMENDED LANDSCAPE SPECIES LIST FOR STREET TREES AND LAND DEVELOPMENT PROJECTS, WHILE PROTECTING ENVIRONMENTALLY SENSITIVE AREAS AND AQUATIC BUFFERS.

DEVELOPER CONTACT:
SELWYN PROPERTY GROUP, INC
ATTN: JENSIE TEAGUE
4310 PARK ROAD, SUITE 101
CHARLOTTE, NC 28209

LANDSCAPE ARCHITECT:
SUZANNE GODSEY, PLA
SITEWORK STUDIOS, PLLC
82 PATTON AVENUE, SUITE 700
ASHEVILLE, NC 28801
828.225.4945

ARCHITECT:
ROBIN RAINES , AIA
ROWHOUSE ARCHITECTS
1 NORTH PACK SQUARE
ASHEVILLE, NC 28801
828.281.2344

CIVIL ENGINEER:
CHRIS DAY, PE
CIVIL DESIGN CONCEPTS, PA
168 PATTON AVENUE
ASHEVILLE, NC 28801
828.252.5388

SURVEYOR:
ERIC McABEE, PLS
McABEE & ASSOCIATES, PA
3 MCABEE TRAIL
FAIRVIEW, NC 28730
828.628.1295

ZONING:
CURRENT ZONING: C-2 SECONDARY BUSINESS
PROPOSED ZONING: CMUCZD - CENTRAL MIXED USE
CONDITIONAL ZONING DISTRICT CLASSIFICATION

PROPOSED USE: 70 APARTMENTS

PIN: 9568-75-5382

SIZE OF PROPERTY: 3.63 AC
DENSITY: 19.2 UNITS/ACRE

EXISTING IMPERVIOUS SURFACE:
346 SF (0.008 ACRES)
0.3% OF SITE

PROPOSED IMPERVIOUS SURFACE:
77,034 SF (1.77 ACRES)
48.7% OF SITE

SETBACKS:
FRONT: 12' MINIMUM
SIDE/ REAR: 0'

BUILDING HEIGHT MAXIMUM: 64 FT FOR RESIDENTIAL
PROPOSED BUILDING HEIGHT: 52 FT

PARKING REQUIREMENTS:
REQUIRED AT 1 PARKING SPACE PER UNIT
PROPOSED BUILDING UNITS: 70 UNITS
MIN. REQUIRED PARKING = 70 SPACES
PROVIDED PARKING = 97 SPACES (WITH 4 HC SPACES)

TOTAL PROJECT AREA CALCULATIONS:

TOTAL PROJECT AREA = 3.63 AC. (158,122.8 SF)
BUILDING COVERAGE = 22,134 SF / 0.5 AC (14% OF SITE)
STREETS AND PARKING COVERAGE = 45,091 SF / 1.03 AC (28% OF SITE)
OPEN SPACE = 19,320 SF / 0.44 AC (12% OF SITE)
LANDSCAPE AREAS/ SLOPED BANK COVERAGE = 39,556.2 SF/ 0.9 AC.
(26% OF SITE)

LIMITS OF DISTURBANCE: 121,432 SF (2.79 AC.)

SOUTHGATE APARTMENTS

PREPARED FOR:

CAPITOL FUNDS, INC.

P.O. BOX 144
SHEIRY NORTH CAROLINA 28151

REVISIONS

NO.	REMARKS	DATE
1	CITY COMMENTS	03.03.2022
2	CITY COMMENTS	03.25.2022
3	CZ CONDITIONS	04.08.2022
4	REVISIONS	04.25.2022

CONDITIONAL ZONING REVIEW

DATE:
04.08.2022

SHEET TITLE:

PRELIMINARY SITE PLAN

SHEET NO.

L-200



NEIGHBORHOOD COMPATIBILITY MEETING REPORT

SOUTHGATE APARTMENTS (P21-62-CZD)

NCM Meeting Dates: October 21, 2021

October 29, 2021

PETITION REQUEST: Rezoning: Southgate Apartments-Conditional Zoning District (CMU-CZD)

APPLICANT/PETITIONER: Capitol Funds (David Royster)

NEIGHBORHOOD COMPATIBILITY MEETING SUMMARY:

Two Neighborhood Compatibility Meetings were held for this project due to technical issue for virtual participation via Zoom. The meeting were held on October 21 and 29, 2021 at 2pm in the City Operations Building at 305 Williams St and via Zoom.

Meeting 1 - Approximately 2 members of the public were in attendance in-person with 3 others attending virtually for the first meeting. Additionally, in attendance were the applicant team consisting of 4 people and 4 members of City staff.

There was one pre-submitted comments for the first meeting.

The development team was allowed to present following the introduction from staff.

Questions and concerns raised by attendees included: questions about access on Israel St., widening of Israel St, Tree removal along Israel St, adjacent ROW between the site and Kanuga Rd and who the “target” renters would be for the apartments.

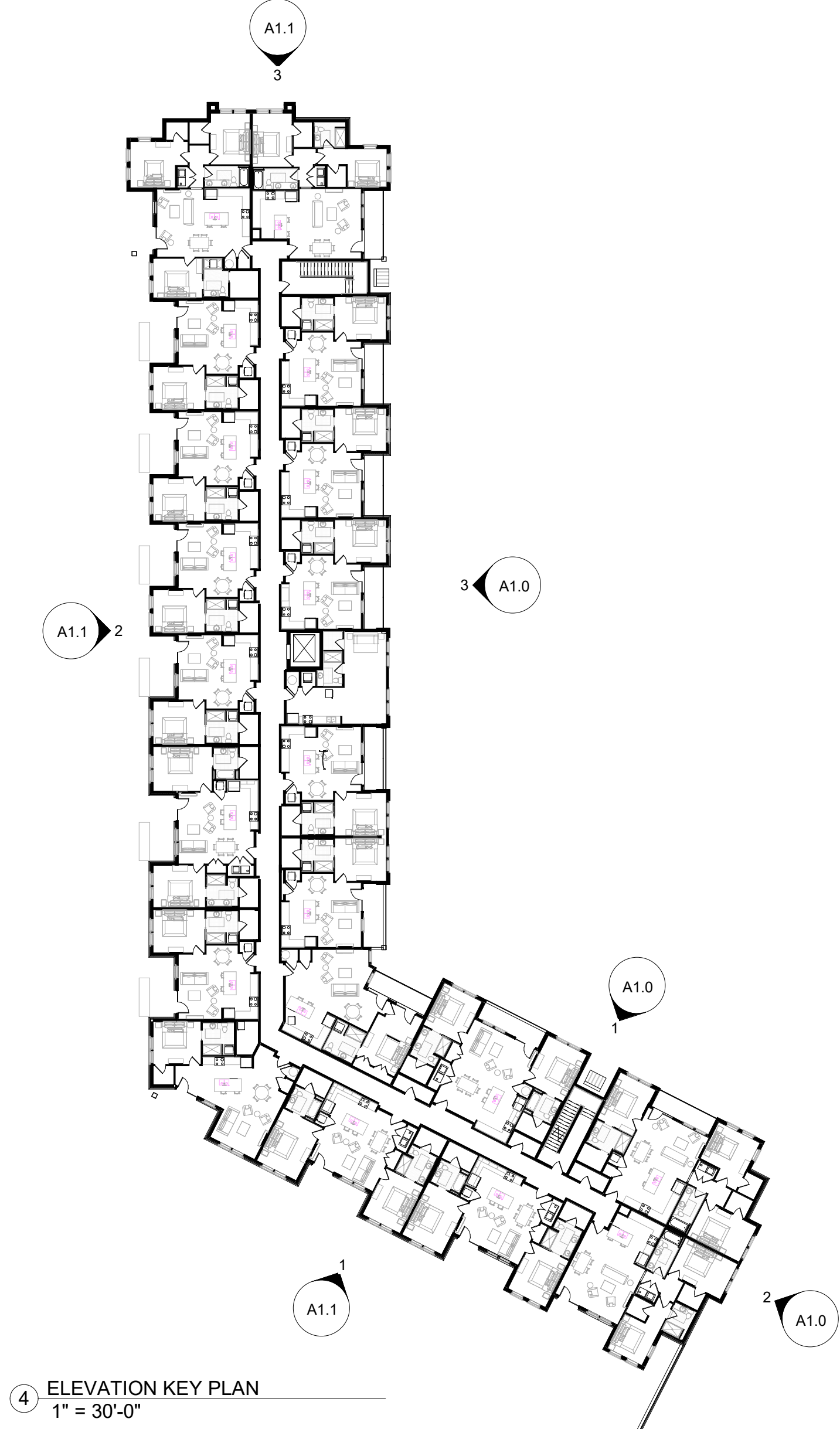
Meeting 2 - Approximately 3 members of the public were in attendance in-person with 3 others attending virtually. Additionally, in attendance were the applicant team consisting of 2 people and 3 members of City staff.

There were no pre-submitted comments for the first meeting.

The development team was allowed to present following the introduction from staff.

Questions and concerns raised by attendees included: questions about flooding, pervious surfaces in the floodplain, elevators in the buildings, maintenance, height of the building, access to the round-a-bout proposed for S Main St, access to the Ecusta Trail, and tree plantings.

Full minutes from the Neighborhood Compatibility Meetings and pre-submitted public comment are available for review by request.



Release / Revision Dates		
No.	Description	Date

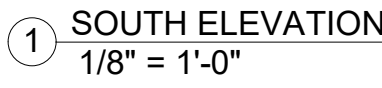
Date
3.3.2022

Sheet Title
ELEVATIONS

SOUTHGATE APARTMENTS

ED FOR: CAPITOL FUNDS, INC.

PREPARED FOR: CAPITOL FUNDS, INC.





TREE BOARD RECOMMENDATION
SOUTHGATE APARTMENTS (P21-62-CZD)
FEBRUARY 15, 2022

PETITION REQUEST: Rezoning: Central Mixed Use - Conditional Zoning District (CMU-CZD)

APPLICANT/PETITIONER: David Royster, Capital Funds (Owner / Developer)

TREE BOARD ACTION SUMMARY:

Staff presented to the Tree Board at a regular meeting on February 15, 2022. This was the applicant's second visit to the Tree Board following a revised site plan/landscaping plan which impacted additional trees on the site. The following Recommendation were made:

Rezoning: Conditional Zoning District – Southgate Apartments (P21-62-CZD) – Matthew Manley, AICP – Planning Manager

This project has reduced the size of the buildings, parking lot, and impervious surfaces on the site. They are keeping the same number of proposed trees and shrubs as they had planned for under the original project.

Motion: Based on the following guiding city code documents (the Municipal Code, Chapter 46, Article IV, Division I, Trees & Shrubs, Section 46, 116 & 117; the Zoning Code, Article XV Buffering, Screening & Landscaping Sections 15-1, A & C and 15-4 A; the Subdivision Ordinance, Purpose and Intent, Section 1.04, Part H; and the Comprehensive Plan, Vision Statement and Section 3.3, Goal NR-1, Strategy 1.2 and Goal NR-2, Strategy 2.3) and the City Council's adoption (Feb., 2021) of core values and beliefs as guiding principles as they apply to protection of natural resources and the prioritization of existing tree canopy, the Tree Board recommends the following development conditions be placed on this property:

1. Plant slope area with diverse and appropriate species of native upland small maturing or understory trees, shrubs (both with proper spacing) and herbaceous plants.
2. All preserved trees must be protected from construction activities as prescribed in the zoning code 15-4c regardless of use for a tree credit.
3. Attempt to eradicate invasive plant species found on the property as listed in the Recommended Landscape Species List for Street Trees and Land Development Projects.

BOARD ACTION

Motion: Glenn Lange

Yeas: All

Nays: None

Recused: None

PLANNING BOARD RECOMMENDATIONProject #: P21-62-CZDMay 5, 2022

PETITION REQUEST: Conditional Rezoning – Southgate Apartments (PIN 9568-75-5382)

APPLICANT/PETITIONER: Suzanne Godsey, Site Work Studios (Applicant) & David Royster, Capitol Funds (Owner)

PLANNING BOARD ACTION SUMMARY:

Staff gave a presentation on the request and reviewed the guidance from the Comprehensive Plan as well as the criteria for considering a rezoning. Planning Board considered this item for 2 hours and 10 minutes. The main topics discussed by the Planning Board members related to development within the floodplain and issues related to access and specifically the conditions on Israel St.

The following members of the development team were present and provided information related to the proposed apartment complex: Craig Justus, Attorney with Van Winkle Law Firm; Suzanne Godsey, Landscape Architect with Sitework Studios; Chris Day with Civil Design Concepts; David Hyder with JM Teague Engineering; and David Royster, owner and president of Capitol Funds.

The development team discussed the developer's proposed conditions to pay a fee-in-lieu of sidewalks, fill in the floodplain and utilize 25% of the floodplain for the development. They also highlighted that they are agreeing to 9 of the 11 conditions proposed by the City. The two conditions they did not agree to are: 1) to remove the proposed gates at the access points of the development and 2) to construct sidewalks from the Israel St access point to existing sidewalks on Kanuga Rd. The reasoning for not agreeing to the conditions related to concerns of "cut-through" traffic and lack of control of land to build sidewalks along Israel St.

Four members of the public spoke in opposition to the development:

- Kelly McClendon of White Street spoke at length about her concerns related to development in the floodplain and concerns that the site is a "wetlands". She questioned whether the city should exercise eminent domain to preserve the land.
- Mona Groban of Davis Street expressed concerns about the impact that traffic will have on the neighborhood.
- Ken Fitch of Patton Street spoke of concerns related to flooding and the substandard condition of Israel St in relation to additional traffic generated by the proposed project.
- John Hernandez of Long John Drive questioned potential conflicts with traffic and users of the Ecusta Trail and impact to property values. He proposed that the site be dedicated as parkland.

Planning Board members expressed concerns related to flooding, emergency response access, proposed parking in the floodplain and the amount of parking being in excess of the minimum required by code.

The Planning Board made two motions, both of which failed. The first motion was a motion to Approve as presented. The vote for this motion failed 3 to 5. The second motion was a motion to Deny the request. The vote for the second motion failed 4 to 4. The Comprehensive Plan Consistency Statement was the same for both motions and was stated as follows:

COMPREHENSIVE PLAN CONSISTENCY AND REASONABLENESS STATEMENT:

The petition is found to be consistent with the City of Hendersonville 2030 Comprehensive Plan based on the information from the staff analysis and the public hearing, and because:

The High Intensity Neighborhood designation calls for Multi-Family Residential as a primary land use and the proposed site plan aligns with a majority of development guidelines listed under LU 7.4.

MOTION TO APPROVE: The first motion provided the following reasonableness statement which failed 3 to 5:

We find this petition to be reasonable and in the public interest based on the information from the staff analysis and the public hearing, and because:

[Rationale for Approval]

- 1. The petition is located in a Priority Infill Area which recommends redevelopment of underutilized lots*
- 2. The petition provides infill development utilizing existing infrastructure*
- 3. The petition provides additional housing in close proximity to downtown and the future Ecusta Trail and in close proximity to goods and services*
- 4. The petition provides a transition from uses of high intensity to lower intensity uses*
- 5. The existing C-2 zoning provides a wide range of high intensity commercial uses including car washes, automobile and farm equipment sales, hotels, animal hospitals, service stations, and small-scale manufacturing by right up to 50,000 Sq Ft. The petition for multi-family housing in the CMU District provides greater compatibility with surrounding land uses than other potential by-right developments.*

BOARD ACTION FOR MOTION TO APPROVE:

- Motion/Second:** Peter Hanley / Tamara Peacock
- Yeas:** Hanley, Peacock, Brown, Robertson, Nace
- Nays:** Cromar
- Absent:** Jon Blatt
- Recused:** N/A

After the first motion failed, the Board was advised by staff that a recommendation including a Comprehensive Plan Consistency Statement was needed and that a new motion should be made. A Motion to Deny the petition was then made. The Comprehensive Plan Consistency Statement in the second motion was the same as in the first.

MOTION TO DENY: The motion to Deny provided the following reasonableness statement:

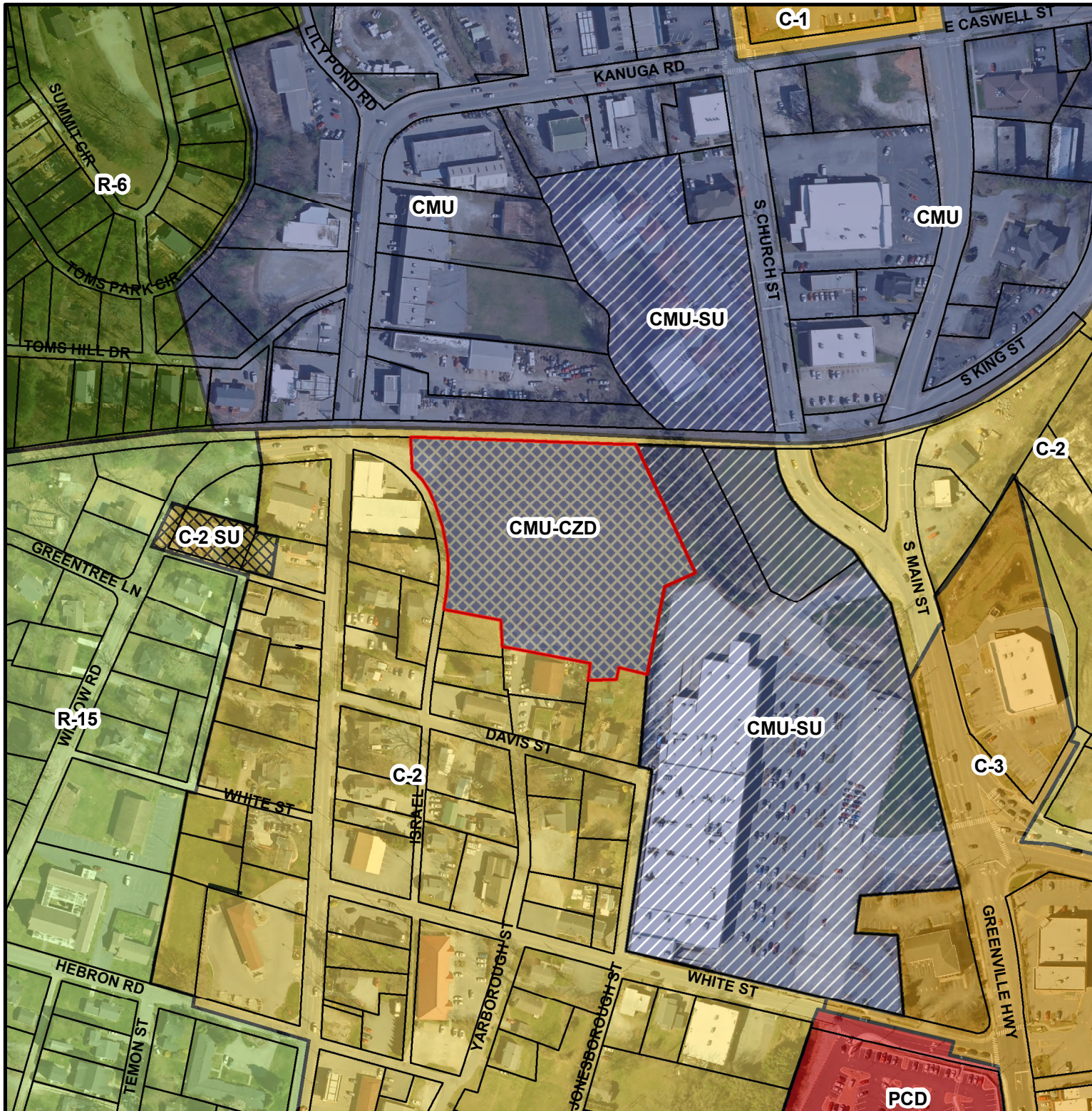
We do not find this petition to be reasonable and in the public interest based on the information from the staff analysis and the public hearing, and because:

[Rationale for Denial]

- 1. The petition would add an additional 67,225 Sq Ft of buildings, parking lots and streets to a parcel currently utilized for flood storage. This would make 48.7% of the site impervious.*
- 2. The petition proposes parking and grading of 25% of the site's 100-Year floodplain which exceeds that which is permitted by the City's Zoning Ordinance.*
- 3. The petition is requesting to add fill to the 100-Year floodplain at a level which exceeds that which is permitted by the City's Zoning Ordinance.*
- 4. Israel St is a substandard local street which is not designed to accommodate additional traffic.*

BOARD ACTION FOR MOTION TO DENY:

- Motion/Second:** Peter Hanley / Tamara Peacock
- Yeas:** Hanley, Peacock, Brown, Robertson
- Nays:** Cromar, Glassman, Jones, Nace
- Absent:** Jon Blatt
- Recused:** N/A



Southgate Apartments
P21-62-CZD
PINs: 9568-75-5382
Acreage: 3.63
Proposed Zoning
Community Development Department

-  Subject Property
- Hendersonville Zoning**
-  R-15 Medium Density Residential
 -  R-6 High Density Residential
 -  C-3 Highway Business
 -  C-2 Secondary Business
 -  C-2SU Secondary Business Special Use
 -  C-1 Central Business
 -  CMU Central Mixed Use
 -  CMUSU Central Mixed Use Specila Use
 -  PCD Planned Commercial Development
 -  PMD Planned Manufacturing Development





**CITY OF HENDERSONVILLE
COMMUNITY DEVELOPMENT DEPARTMENT**

100 N. King Street, Hendersonville, NC 28792

Phone (828) 697-3010 | Fax (828) 698-6185

www.hendersonvillenc.gov

**Conditional Zoning District Petition
Section 7-4 and Article 11 City Zoning Ordinance**

The following are the **required** submittals for a complete application for rezoning a property or properties to a Conditional Zoning District. Staff will not review applications until each item has been submitted and determined complete. By placing a check mark by each of the following items, you are certifying that you have performed that task.

- ☐ 1. Scheduled Pre-Application meeting with Planning Staff
 - 1a. Completed Neighborhood Compatibility Meeting – Contact Staff & Review CZD Checklist for additional information
- ☐ 2. Water and Sewer Availability Request
- ☐ 3. Completed Application Form
- ☐ 4. Completed Signature Page (completed Owner's Affidavit if different from applicant)
- ☐ 5. Completed Site Plan as described in Section 7-4.3-1 of the City Zoning Ordinance
- ☐ 6. Detailed explanation of any Proposed Development Description
- ☐ 7. Application Fee

Note: Additional Approvals prior to the issuance of a Zoning Compliance Permit may include, but are not limited to the following:

- Henderson County Sedimentation & Erosion Permit
- Stormwater Management Plan
- Utility Approval
- NCDOT Permit
- Any other applicable permits as determined by the Community Development

[Application Continued on Next Page]

Office Use:

Date Received: _____ By: _____ Fee Received? Y/N

A. Applicant Contact Information

SUZANNE GODSEY
 * Printed Applicant Name

SITWORK STUDIOS
 Printed Company Name (if applicable)

☐ Corporation ☒ Limited Liability Company ☐ Trust ☐ Partnership

☐ Other: _____

Suzanne V Godsey
 Applicant Signature

Applicant Title (if applicable)

82 PATTON AVE. SUITE 700
 Address of Applicant

ASHEVILLE, NC 28801
 City, State, and Zip Code

828-713-8065 (c)
 Telephone

sgodsey@siteworkstudios.com
 Email

* 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.

[Application Continued on Next Page]

B. Property Owner Contact Information (if different from Applicant)David W. Royster III

*Printed Owner Name

CAPITOL FUNDS, INC.

Printed Company Name (if applicable)

☒ Corporation☐ Limited Liability Company☐ Trust☐ Partnership☐ Other: _____David W. Royster III

Property Owner Signature

Pres.

Property Owner Title (if applicable)

P.O. Box 144 Shelby, NC 28151

City, State, and Zip Code

704 - 487 - 8547

Telephone

droysteriii @ capitol funds inc. com

Email

* Property owner hereby grants permission to the City of Hendersonville personnel to enter the subject property for any purpose required in processing this application.

* If signed by an agent on behalf of the Owner, this petition MUST be accompanied by a Limited Power of Attorney signed by the property owner (s) and notarized, specifically authorizing the agent to act on the owner (s) behalf in signing this application. Failure of each owner, or their duly authorized agent, to sign, or failure to include the authority of the agent signed by the property owner, will result in an INVALID APPLICATION.

Note: Additional Owner Signature pages attached.

C. Property Information

Name of Project: SOUTHGATE APARTMENTS

PIN(s): 9568-75-5382

Address(es) / Location of Property: NO ADDRESS ASSIGNED

176/25 INTERSECTION BEHIND

Type of Development: ☒ Residential ☐ Commercial ☐ Other

Current Zoning: C-2 SECONDARY BUSINESS

Total Acreage: 3.63 AC.

Proposed Zoning: CMUCZD CENTRAL MIXED USE CONDITIONAL ZONING

Proposed Building Square Footage: 110,000 SF GFA (+/-)

Number of Dwelling Units: 84 UNITS

List of Requested Uses: PROPOSED RESIDENTIAL APARTMENT DEVELOPMENT.

D. Proposed Development Conditions for the Site

In the spaces provided below, please provide a description of the Proposed Development for the site.

OUR PROPOSED PLAN IS AN 84 UNIT APARTMENT BUILDING
WITH ACCESS FROM CHURCH AND ISRAEL STREETS.

ADEQUATE PARKING, APPROPRIATE STORMWATER, AMENITY
FEATURES AND CONNECTIVITY TO THE ECUSTA TRAIL ARE
INCLUDED IN OUR PROPOSED PLAN.



StarNews | The Dispatch | Times-News
Sun Journal | The Daily News | The Star
The Free Press | Gaston Gazette

Order Confirmation

Not an Invoice

Section 7, Item E.

Account Number:	488558
Customer Name:	City Of Hendersonville
Customer Address:	City Of Hendersonville 160 6Th AVE E City Clerk Hendersonville NC 28792-3775
Contact Name:	Angela Reece
Contact Phone:	828-697-3005
Contact Email:	areece@hvlnc.gov
PO Number:	

Date:	04/20/2022
Order Number:	7197615
Prepayment Amount:	\$ 0.00

Column Count:	1.0000
Line Count:	145.0000
Height in Inches:	0.0000

Print

Product	#Insertions	Start - End	Category
HEN Times-News	2	04/24/2022 - 05/01/2022	Govt Public Notices
HEN blueridgenow.com	2	04/24/2022 - 05/01/2022	Govt Public Notices

Total Order Confirmation

\$39.80

Ad Preview

Section 7, Item E.

PUBLIC HEARING NOTICE

Notice is hereby given that the City of Hendersonville City Council will hold four public hearings on Thursday, May 5, 2022, at 5:45 p.m., or as soon thereafter as possible in the City Operations Assembly Room located at 305 Williams Street, Hendersonville NC to consider the following:

I. Zoning Text Amendment – Conditional Zoning District (CZD) – Rezoning Required (P22-25-27A) – City staff initiated Zoning Text Amendment to establish a conditional zoning requirement for development or redevelopment of 20,000 square feet or more and the development of 50 residential units or more across all zoning districts within the City, subject to examinations explicitly established within the Zoning Ordinance.

II. Conditional Zoning District Hawkins Pointe (P22-16-CZD) – Application for a Conditional Zoning District from Clay Cooper of Woda Cooper Companies LLC. The applicant is requesting to rezone the subject property, PIN's 9568-48-8860, 9568-48-9996, 9568-58-1016, 9568-58-2974, 9568-58-491, and 9568-58-3724 and located on Sixth Avenue and Florida Avenue from MUC, Medical, Institutional, Cultural to UR CZD, Urban Residential Conditional Zoning District for the construction of a 3-4-story multi-unit, +/-55,500 sq ft multi-family development on approximately 1.66 acres. The applicant is applying to receive Low-Income Housing Tax Credits.

III. Conditional Zoning District – White Pine Villas (P22-15CZD) – Application for a Conditional Zoning District from Dennis Thorrington and Stephen Drake of WDT Development, LLC. The applicant is requesting to rezone the subject properties identified as PIN's 9670-70-6495, 9670-70-8697 and 9670-70-8864 and located at 2620 Chimney Rock Road from PRD CZD, Planned Residential Development Conditional Zoning District to PRD CZD, Planned Residential Development Conditional Zoning District for the construction of a four-story, 78-unit, +/-48,500 sq. ft. multi-family development on approximately 4.44 acres. The applicant is applying to receive Low-Income Housing Tax Credits.

IV. Conditional Zoning District – Southgate Apartments (P21-62-CZD) – Application for a conditional rezoning from Suzanne Godsey of Site-work Studios, applicant and David W. Royster, III of Capital Funds, Inc., property owner. The applicants are requesting to rezone the subject property, PIN 9568-75-3382 and located off of Kanawha Road, from C-2, Secondary Business to CMU CZD, Central Mixed Use Conditional Zoning District for the construction of a 4-story, 70-unit, 81,897 sq ft multi-family development on approximately 3.63 acres.

Digital/written public hearing comments must be received twenty-four hours prior to the meeting (by 5:45 p.m. on Wednesday, May 3, 2022) to be considered by the City Council and must comply with security criteria in the Council's Public Comment Policy, available on the City's website.

Public hearing comments will also be accepted during the meeting from those attending in person and from those participating live via ZOOM at the designated time of this meeting. For security reasons screen sharing will not be allowed. Anyone wishing to submit written/digital public hearing comments for these public hearings prior to the meeting may visit <https://www.hendersonville-nc.gov/submitcomment> to submit their comment. It is not necessary to submit digital comments if you are planning to address City Council during the meeting.

The meeting instructions to join by Zoom will be available on the City's website calendar by visiting <https://www.hendersonville-nc.gov/events-calendar> and as follows:

Zoom information for the meeting is: <https://zoom.us/join>
Dial-in by phone: (440) 538-8655
Meeting ID: 822 004 5328
Passcode: 1847

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 no later than 24 hours in advance of the meeting (893) 897-3005.

87197615 4/24, 5/1/2022

PUBLIC HEARING NOTICE

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- I. **Zoning Text Amendment – Conditional Zoning District (CZD) Rezoning Required (P22-25-ZTA)** - City staff initiated Zoning Text Amendment to establish a conditional zoning requirement for development or redevelopment of 50,000 square feet or more and the development of 50 residential units or more across all zoning districts within the City, subject to exemptions explicitly established within the Zoning Ordinance.

- II. **Conditional Zoning District – Hawkins Pointe (P22-16-CZD)** - Application for a Conditional Zoning District from Clay Cooper of Woda Cooper Companies LLC. The applicant is requesting to rezone the subject property, PIN's 9568-48-9860, 9568-48-9996, 9568-58-1916, 9568-58-2974, 9568-58-491, and 9568-58-3734 and located on Sixth Avenue and Florida Avenue, from MIC, Medical, Institutional, Cultural to UR CZD, Urban Residential Conditional Zoning District for the construction of a 3-4-story split, 52-unit, +/-55,500 sq ft multi-family development on approximately 1.66 acres. The applicant is applying to receive Low-Income Housing Tax Credits.

- III. **Conditional Zoning District – White Pine Villas (P22-13-CZD)** - Application for a Conditional Zoning District from Dennis Tharrington and Stephen Drake of WDT Development, LLC. The applicant is requesting to rezone the subject properties identified as PIN's 9670-70-6498, 9670-70-8697 and 9670-70-8864 and located at 2620 Chimney Rock Road. from PRD CZD, Planned Residential Development Conditional Zoning District to PRD CZD, Planned Residential Development Conditional Zoning District for the construction of a four-story, 78-unit, +/-88,500 sq. ft. multi-family development on approximately 4.64 acres. The applicant is applying to receive Low-Income Housing Tax Credits.

- IV. **Conditional Zoning District – Southgate Apartments (P21-62-CZD)** - Application for a conditional rezoning from Suzanne Godsey of Sitework Studios, applicant and David W. Royster, III of Capitol Funds, Inc., property owner. The applicants are requesting to rezone the subject property, PIN 9568-75-5382 and located off of Kanuga Road, from C-2, Secondary Business to CMU CZD, Central Mixed Use Conditional Zoning District for the construction of a 4-story, 70-unit, 81,897 sq ft multi-family development on approximately 3.63 acres.

Digital/written public hearing comments must be received twenty-four hours prior to the meeting (by 5:45 p.m. on Wednesday May 4th) to be considered by the City Council **and must** comply with security criteria in the Council's Public Comment Policy, available on the City's website.

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Dial-in by phone: (646) 558-8656
Meeting ID: 822 0104 2528
Passcode: 1847

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 no later than 24 hours in advance of the meeting (828) 697-3005.

Run two times: Sunday, April 24, 2022, Sunday, May 1, 2022



CITY OF HENDERSONVILLE

AGENDA ITEM SUMMARY

SUBMITTER:

John Connet

MEETING DATE:

5/3/2022

AGENDA SECTION:

NEW BUSINESS

DEPARTMENT:

Administration

TITLE OF ITEM:

Local Option Sales Tax Resolution – *John Connet, City Manager*

SUGGESTED MOTION(S):

I move that the City Council adopt a resolution asking the Henderson County legislative delegation to introduce a local bill authorizing the establishment of a new one-quarter cent sales and use tax for the City of Hendersonville.

SUMMARY:

During the City Council budget workshop on April 29, 2022, the City Council directed staff to prepare a local option sales tax resolution for consideration by the City Council.

BUDGET IMPACT: \$2.5 million

Is this expenditure approved in the current fiscal year budget? NA

If no, describe how it will be funded. NA

ATTACHMENTS:

Proposed Resolution

Resolution #

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL REQUESTING A
LOCAL OPTION ONE-QUARTER CENT (1/4) CITY SALES AND USE TAX**

WHEREAS, the City of Hendersonville is the commercial center of Henderson County and provides services to all Henderson County residents and visitors, including public safety, street maintenance and general public services; and

WHEREAS, the property tax is currently the only revenue source that is within complete control of the City Council; and

WHEREAS, the City of Hendersonville’s property tax rate for fiscal year 2021-22 is \$0.52 per \$100, and the City Council is often faced with increasing this rate to fund services that are used by all county residents and visitors; and

WHEREAS, the City of Hendersonville City Council is seeking alternative revenue sources to fund city services; and

WHEREAS, it is estimated that a one-quarter cent City sales and use tax would bring an estimated \$2.5 million dollars in additional revenues per year.

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

1. We request the Henderson County legislative delegation to introduce a local bill authorizing the City of Hendersonville to hold a public referendum to authorize the establishment of an additional one-quarter cent sales tax for all qualified purchases within the City of Hendersonville.
2. This tax would be collected by the North Carolina Department of Revenue and directly allocated to the City of Hendersonville as unrestricted revenue for the provision of local government serves as directed by the Hendersonville City Council.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 5th day of May 2022.

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

AGENDA ITEM SUMMARY

SUBMITTER: John Connet **MEETING DATE:** May 5, 2022

AGENDA SECTION: NEW BUSINESS **DEPARTMENT:** Administration

TITLE OF ITEM: Resolutions of Support for Apple Ridge, Hawkins Pointe and White Pine Villas Low Income Housing Tax Credit (LIHTC) Applications – *John Connet City Manager*

SUGGESTED MOTION(S):

I move that the City Council adopt resolutions of support for the following low income housing tax credit projects _____ (Apple Ridge, Hawkins Pointe and White Pine Villas).

SUMMARY:

Henderson County has an extreme shortage of low-income housing units. Three development entities will be submitting LIHTC project applications for projects in Hendersonville. It is highly unlikely that more than one of these LIHTC applications will be approved by the North Carolina Housing Finance Agency. Therefore, staff requests that City Council adopt resolutions of support for all projects that have received entitlement approvals by the City Council. Draft resolutions are attached for your consideration.

BUDGET IMPACT: \$ NA

Is this expenditure approved in the current fiscal year budget? NA

If no, describe how it will be funded. NA

ATTACHMENTS:

Draft Resolutions

Resolution #__-____

RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO SUPPORT THE FEDERAL TAX CREDIT APPLICATION FOR APPLE RIDGE DEVELOPMENT

WHEREAS, Housing Assistance Corporation has submitted a federal tax credit application to the North Carolina Housing Finance Agency for Apple Ridge Apartments and Subdivision, Application #APP22-0058, Project # 9279272; and

WHEREAS, Apple Ridge consists of sixty (60) multi-family housing units and twenty (20) single family units on Sugarloaf Road; and

WHEREAS, the Bowen Research Report indicates that Henderson County has 99.8% occupancy rate for multi-family projects, 453 families on rental housing wait lists and 42.8% of renters are cost burdened; and

WHEREAS, the City Council has a core belief that it must pursue and provide opportunity for responsible growth in order to generate affordable housing options and reduce the impacts of high cost of living within our community.

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

1. The City Council supports Housing Assistance Corporation’s application for federal tax credits and requests that the North Carolina Housing Finance Agency give the application serious consideration for approval.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 5th day of May 2022.

Attest:

Barbara G. Volk, Mayor, City of Hendersonville

Angela L. Reece, City Clerk

Approved as to form:

Angela S. Beeker, City Attorney

Resolution #__-____

RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO SUPPORT THE FEDERAL TAX CREDIT APPLICATION FOR HAWKINS POINTE APARTMENTS

WHEREAS, Wodo Cooper Companies, Inc. has submitted a federal tax credit application to the North Carolina Housing Finance Agency for Hawkins Pointe Apartments, Application #APP22-0141, Project #9279496; and

WHEREAS, Hawkins Pointe consists of fifty-two (52) multi-family housing units on 6th Avenue W. (U.S. 64); and

WHEREAS, the Bowen Research Report indicates that Henderson County has 99.8% occupancy rate for multi-family projects, 453 families on rental housing wait lists and 42.8% of renters are cost burdened; and

WHEREAS, the City Council has a core belief that it must pursue and provide opportunity for responsible growth in order to generate affordable housing options and reduce the impacts of high cost of living within our community.

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

1. The City Council supports Wodo Cooper Companies Inc's application for federal tax credits and requests that the North Carolina Housing Finance Agency give the application serious consideration for approval.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 5th day of May 2022.

Attest:

Barbara G. Volk, Mayor, City of Hendersonville

Angela L. Reece, City Clerk

Approved as to form:

Angela S. Beeker, City Attorney

Resolution #__-____

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO SUPPORT
THE FEDERAL TAX CREDIT APPLICATION FOR WHITE PINE VILLAS**

WHEREAS, WDT Development, LLC has submitted a federal tax credit application to the North Carolina Housing Finance Agency for White Pine Villas, Application #APP22-0132, Project #9279483; and

WHEREAS, White Pine Villas consists of seventy-eight (78) multi-family housing units on Chimney Rock Road (U.S. 64 East); and

WHEREAS, the Bowen Research Report indicates that Henderson County has 99.8% occupancy rate for multi-family projects, 453 families on rental housing wait lists and 42.8% of renters are cost burdened; and

WHEREAS, the City Council has a core belief that it must pursue and provide opportunity for responsible growth in order to generate affordable housing options and reduce the impacts of high cost of living within our community.

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

1. The City Council supports WDT Corporation’s application for federal tax credits and requests that the North Carolina Housing Finance Agency give the application serious consideration for approval.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 5th day of May 2022.

Attest:

Barbara G. Volk, Mayor, City of Hendersonville

Angela L. Reece, City Clerk

Approved as to form:

Angela S. Beeker, City Attorney

Resolution #R-22-59

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL APPROVING
THE CITY'S PARTICIPATION IN THE FRENCH BROAD RIVER PARTNERSHIP**

WHEREAS, the French Broad River basin is a vital resource that provides critical aquatic habitat for wildlife, supplies drinking water to many communities and supports a variety of forms of recreation; and

WHEREAS, the City of Hendersonville represents the 2nd largest municipality by population in the French Broad River basin; and

WHEREAS, the City of Hendersonville is directly affected by water quality impairments in Mud Creek and the French Broad River basin and strives for excellent water quality in our community; and

WHEREAS, the French Broad River Partnership are a group of 50+ nonprofits, businesses, and government agencies working "To maintain and improve stream health within the French Broad River Watershed for environmental and economic benefits"; and

WHEREAS, the City of Hendersonville believes that it is our responsibility to protect all our natural resources and the environment through the implementation of sustainable and responsible projects and the City must lead by example to ensure we protect or repair the natural environment and are environmentally sustainable.

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

1. The City of Hendersonville accepts the invitation from the French Broad River Partnership to participate as a member organization.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 5th day of May, 2022.

Attest:

Barbara G. Volk, Mayor, City of Hendersonville

Angela L. Reece, City Clerk

Approved as to form:

Angela S. Beeker, City Attorney

French Broad River Partnership Membership Policy

I. Mission, Vision, & Guiding Principles:

Mission: To maintain and improve stream health within the French Broad River Watershed for environmental and economic benefits.

Vision: That broad-based interests work collaboratively to ensure the French Broad River Watershed serves as a source of drinking water and recreation while supporting biodiversity, sustainable agriculture, forestry, and economic growth.

Guiding Principles: We recognize sustainable economic development and the pursuit of improved water quality are mutually beneficial goals. We work collaboratively, engaging the skills and resources of diverse stakeholders to achieve a greater positive impact. We operate with integrity and transparency to define challenges to watershed health and resolve them through innovation and stakeholder commitment, resulting in a lasting impact on the river. We engage communities because knowledge empowers all to consider the health of the river in daily and long-term decisions.

II. Partnership Strategy:

A broad-based partnership is needed to achieve and support significant water quality improvements and protections in the French Broad River watershed. Participants may include, but are not limited to: nonprofit organizations; businesses; academic institutions; informal community or issue-based organizations; local, state, and federal government agencies; and individuals. The French Broad River Partnership is committed to the principles of equity, inclusion, and non-discrimination.

As a partnership, we will identify a focused set of meaningful policies, consistent with our mission, vision and principles that can be supported by a broad set of organizations. The Partnership may serve as a platform for networking around projects, however, many of our organizations will likely work on issues outside of and not formally endorsed by the Partnership.

The strategies we employ may include public support, engaging regulatory agencies, leveraging the Partnership to access funding, project-based improvements, working with public land managers and private landowners, public education, and policy initiatives.

III. Structure:

Partnership “Members” are those whose values align with the mission, vision and principles of the Partnership and actively contribute to the work of the Partnership. Member organizations will designate a point person to be the primary contact with the partnership. Members are included on email communications and may participate in all partnership meetings and vote on Partnership matters. Members are encouraged to commit a higher level of staff or leader time to advance the work of the partnership. Their responsibilities include, but are not limited to, assisting in planning meeting agendas, taking responsibility for specific pieces of the partnership’s work load, and determining strategy for partnership campaigns. Members not able to continue active participation are encouraged to stay involved as Supporters.

Members may request representation on the “Steering Committee.” Members may designate representatives to serve on working groups. The Partnership encourages Members to be consistently engaged with the working group that best aligns with their interests. Working groups will convene initially around issues of water quality, recreation and business, and education and outreach. Additional working groups may be established by the Steering Committee as needs arise. The Steering Committee and working groups may establish subcommittees around issues as they deem necessary and appropriate. Working groups will develop a work plan and project proposals that will be submitted to the Steering Committee for review and approval.

Partnership “Supporters” are those whose values align with the mission, vision and principles of the Partnership, though they may not actively contribute to the Partnership’s work. Supporters are included on email communications and are welcome to attend/participate in partnership meetings. They do not have a vote on partnership matters. Supporters that decide to be more active in contributing to the Partnership’s work may request to be a Member, subject to approval by the Steering Committee.

Membership issues should be directed to the Steering Committee with a brief summary to be included in the next available meeting agenda.

IV. Decision-making

There may be a number of policy areas where disagreements among Members are possible, and even likely. The partnership will make decisions through consensus of those Members or their appointees present (physically or by phone/email). If there are **slight reservations** by Members on a proposal, but general agreement by the group that it is the best option, it would be considered consensus. If there are **strong feelings** in the group against a proposal, and there is not general agreement of the group, it would not be considered consensus. Decisions will only be made with a quorum of more than half of Members serving on the Steering Committee or working group present. Where consensus cannot be reached, Members may proceed with work using their own resources outside of the Partnership.

V. Communication within the Partnership

As the Partnership evolves over time, our communication tools will change appropriately. At the outset, the Partnership will have:

- An email listserv that reaches all members and supporters of the Partnership that can be used to circulate information about the Partnership, its policy agenda, work plans, and updates about specific issue campaigns.
- A Google Drive file for sharing information between key leaders and volunteers in the Partnership, including internal documents being drafted, work plans, a shared calendar, etc.

Internal communications may not be made public without approval of the Steering Committee.

VI. Communication about the Partnership

We want to strike a balance between having visible, unified partnership and giving each of our organizations' latitude to speak and act independently on watershed health issues. Therefore, we will communicate as a partnership when the issue relates to the work of the Partnership, its goals, and activities.

There will be a communications team, consisting of appointees from the Steering Committee. That team will draft, review, and approve by consensus all Partnership communications to the general public, including partnership website, social media, press outreach, etc. Members must opt in to be mentioned in external communications.

We expect and encourage organizations to also communicate independently about watershed health issues. To the extent possible, when communicating about watershed health issues not directly related to the Partnership, Members will seek to align their messaging to reinforce and amplify the Partnership's principles, policies and strategy. But different organizations may choose to prioritize some pieces of the message (health, jobs, economic benefit, etc.) or focus on different audiences (elected officials, recreation, business, etc.) depending on their own mission and goals.

VII. Data Management

The Steering Committee will maintain the overall Partnership communication list that will consist of anyone who signs up to join or receive information about the Partnership. Each Member may keep the names and contact information for anyone who signs up through them, and the names and contact information of people who sign up at joint or Partnership events will be shared with all Members. Land of Sky Regional Council will maintain the Google Drive file for sharing information between key leaders and volunteers in the partnership, including internal documents being drafted, work plans, a shared calendar, etc. We recognize that documents held on the Google Drive may contain sensitive information, and members agree to keep that information confidential unless otherwise publicly available or unless approved for distribution by the Steering Committee.

VIII. Accountability

We will review and update the Membership Policy and committee work plans as needed or on an annual basis to ensure commitments are honored and resolve any conflicts that arise.

IX. Conflict of Interest

Members will disclose any and all potential conflicts of interest, financial or otherwise, and will recuse themselves from discussions and decisions that may implicate conflicts of interest. The Steering Committee may initiate a closed session to discuss potential conflicts in a confidential setting.

X. Funding & Expenses

Members will communicate about fundraising activities that are specific to the Partnership and agree to work cooperatively to achieve the best result for the Partnership as a whole. Income for the Partnership will be held by Land of Sky Regional Council and used to support Partnership activities. Partnership expenses will be shared consistent with approved work plans or with express approval by the Steering Committee.

The following organization acknowledges this Membership Policy and agrees to the terms contained herein as a Member/Supporter (circle one) of the French Broad River Partnership:

Organization:

Authorized Representative:

Title:

Signature:

Date:

Do you consent to be listed in external communications? yes/no (circle one)



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: John Connet **MEETING DATE:** 05/05/2022
AGENDA SECTION: NEW BUSINESS **DEPARTMENT:** Administration
TITLE OF ITEM: Code of Ethics Complaint – *John Connet, City Manager*

SUGGESTED MOTION(S):

NA

SUMMARY:

Ms. Lynne Williams filed a complaint with the City Clerk stating that Council Member Hensley violated the City Council’s Code of Ethics. The City Council will hear Ms. William’s complaint and determine if any further action is required on this matter.

BUDGET IMPACT: \$ NA

Is this expenditure approved in the current fiscal year budget? NA

If no, describe how it will be funded. NA

ATTACHMENTS:

Code of Ethics

Letter of Complaint

A RESOLUTION ADOPTING A CODE OF ETHICS FOR THE CITY COUNCIL

WHEREAS, pursuant to Session Law 2009-403 the City Council is required to adopt a Code of Ethics, and

WHEREAS, the City Council considers it to be in the best interest of the City to adopt such a code,

NOW, THEREFORE, BE IT THEREFORE RESOLVED: That the City Council does hereby adopt the following as its code of ethics.

**CODE OF ETHICS
FOR THE MAYOR AND CITY COUNCIL**

The stability and proper operation of democratic representative government depends upon the continuing consent of the governed, upon the public confidence in the integrity of the government and upon responsible exercise of the trust conferred by the people. Government decisions and policy must be made and implemented through proper channels and processes of the governmental structure. The purpose of this code is to establish guidelines for ethical standards of conduct for the Mayor and City Council and all references herein to the City Council shall be understood to include the Mayor. It should not be considered a substitute for the law or a City Council member's best judgment.

City Council Members must be able to act in a manner to maintain their integrity and independence, yet must be responsive to the interests and needs of those they represent. City Council Members serve in an important advocacy capacity in meeting the needs of their citizens and should recognize the legitimacy of this role as well as the intrinsic importance of this function to the proper functioning of representative government. At the same time, City Council Members must, at times, act in an adjudicatory or administrative capacity and must, when doing so, act in a fair and impartial manner. City Council Members must know how to distinguish these roles and when each role is appropriate, and they must act accordingly. City Council Members must be aware of their obligation to conform their behavior to standards of ethical conduct that warrant the trust of their constituents. Each City Council Member must find within his or her own conscience the touchstone on which to determine appropriate conduct.

**One
A City Council Member Shall Obey the Law**

City Council Members shall support the Constitution of the United States, the Constitution of North Carolina and the laws enacted by the Congress of the United States and the General Assembly pursuant thereto. Members specifically acknowledge and agree to comply with the requirements of NCGS §14-234 entitled "Public officers or employees benefiting from public contracts; exceptions."

**Two
A City Council Member Should Uphold the Integrity and
Independence of His or Her Office**

City Council Members should demonstrate the highest standards of personal integrity, truthfulness, honesty and fortitude in all their public activities in order to inspire public confidence and trust in City government. City Council Members should participate in establishing, maintaining, and enforcing, and should themselves observe, high standards of conduct so that the integrity and independence of their office may be preserved. The provisions of this Code should be construed and applied to further these objectives.

Three

A City Council Member Should Avoid Impropriety and the Appearance of Impropriety in All His or Her Activities

It is essential that City government attract those citizens best qualified and willing to serve. City Council Members have legitimate interests -- economic, professional and vocational -- of a private nature. City Council Members should not be denied, and should not deny to other City Council Members or citizens, the opportunity to acquire, retain and pursue private interests, economic or otherwise, except when conflicts with their responsibility to the public cannot be avoided. City Council Members must exercise their best judgment to determine when this is the case.

City Council Members should respect and comply with the law and should conduct themselves at all times in a manner that promotes public confidence in the integrity of the office of City Council Member and of City government.

City Council Members should not allow family, social, or other relationships to unduly influence their conduct or judgment and should not lend the prestige of the office of City Council Member to advance the private interests of others; nor should they convey or permit others to convey the impression that they are in a special position to influence them. City Council Members shall not grant any special consideration, treatment or advantage to any citizen beyond that which is available to every other citizen.

The Mayor or any member of the City Council who has an interest in any official act or action before the Board shall publicly disclose on the record of the Board the nature and extent of such interest and shall withdraw from any consideration of the matter if excused by the Board pursuant to NCGS §160A-75.

Four

A City Council Member Should Perform the Duties of the Office Diligently

City Council Members should, while performing the duties of the office as prescribed by law, give precedence to these duties over other activities. In the performance of these duties, the following standards should apply:

A. Legislative Responsibilities

1. City Council Members should actively pursue policy goals they believe to be in the best interests of their constituents, consistent with orderly decision-making, rules of the City Council and open government.
2. City Council Members should respect the legitimacy of the goals and interests of other City Council Members and should respect the rights of others to pursue goals and policies different from their own.

B. Adjudicative Responsibilities

1. City Council Members should be faithful to the general and local laws pertaining to their office and strive for professional competence in them. They should be unswayed by partisan interests, public clamor or fear of criticism.
2. City Council Members should demand and contribute to the maintenance of order and decorum in proceedings before the City Council.
3. City Council Members should be honest, patient, dignified and courteous to those with whom they deal in their official capacity, and should require similar conduct of their staff and others subject to their direction and control.
4. City Council Members should accord to every person who is legally interested in a proceeding before the Board full right to be heard according to law.

5. City Council Members should dispose promptly of the business of the City for which they are responsible.

C. Administrative Responsibilities

1. City Council Members should clearly distinguish legislative, adjudicatory and administrative responsibilities and should refrain from inappropriate interference in the impartial administration of City affairs by City employees. City Council Members should diligently discharge those administrative responsibilities that are appropriate, should maintain professional competence in the administration of these duties and should facilitate the diligent discharge of the administrative responsibilities of fellow City Council Members and other City officials.
2. City Council Members should conserve the resources of the City in their charge. They should employ City equipment, property, funds and personnel only in legally permissible pursuits and in a manner that exemplifies excellent stewardship.
3. City Council Members should require City employees subject to their direction and control to observe the standards of fidelity and diligence that apply to City Council Members as well as those appropriate for employees.
4. City Council Members who become aware of improper conduct by a City employee should promptly inform the City Manager, or, in the case of a City employee who reports directly to the Board, initiate appropriate disciplinary measures.
5. City Council Members should not employ or recommend the appointment of unnecessary employees and should exercise the power of employment only on the basis of merit, avoid favoritism and refrain from illegal discrimination and nepotism. They should not approve compensation of employees beyond the fair value of services rendered.

Five

A City Council Member Should Conduct the Affairs of the City Council in an Open and Public Manner

City Council Members should be aware of the letter and intent of the State's Open Meetings Law, should conduct the affairs of the City Council consistent with the letter and spirit of that law and consistent with the need to inspire and maintain public confidence in the integrity and fairness of City government and the office of City Council Member. Consistent with this goal of preserving public trust, City Council Members should be aware of the need for discretion in deliberations when the lack of discretion would pose a threat to the resources of the City, to the reputation of current or potential City employees, to orderly and responsible decision making, to the integrity of other governmental processes or to other legitimate interests of the City.

Six

A City Council Member Should Regulate His or Her Extragovernmental Activities to Minimize the Risk of Conflict with His or Her Official Duties

- A. City Council Members should inform themselves concerning campaign finance, conflict of interest and other appropriate state and federal laws and should scrupulously comply with the provisions of such laws.
- B. City Council Members should refrain from financial and business dealings that tend to reflect adversely on the Board or on City government or to interfere with the proper performance of official duties.
- C. City Council Members should manage their personal financial interests to minimize the number of cases in which they must abstain from voting on matters coming before the Board.
- D. Information acquired by City Council Members in their official capacity should not be used or disclosed in financial dealings or for any other purpose not related to official duties.

Seven
A City Council Member Should Refrain from Political Activity
Inappropriate to His or Her Office

- A. City Council Members have a civic responsibility to support good government by every available means, to continue to inform and educate the citizenry about the affairs and processes of City government, and to make themselves available to citizens of the City so that they may ascertain and respond to the needs of the community. In doing so, Council Members may join or affiliate with civic organizations whether partisan or non-partisan, may attend political meetings, and may advocate for and support the principles and policies of civic and political organizations consistent with the Constitution and laws of the United States and of the State of North Carolina.
- B. Candidates for the office of City Council Member, including incumbents:
 - 1. Should inform themselves concerning the laws of this state with regard to campaigns and relevant disclosure requirements and should scrupulously comply with the provisions of such laws;
 - 2. Should maintain the dignity appropriate to the office, and should encourage members of their families to adhere to the same standards of political conduct that apply to City Council Member;
 - 3. Should not make pledges or promises of conduct in office that they will not or cannot perform or would be illegal if it were performed;
 - 4. Should not misrepresent their identity, qualifications, present position, or other fact; and
 - 5. Should avoid pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office.

Eight
A City Council Member Shall Attend Ethics Education Training

All members of governing boards shall receive a minimum of two clock hours of ethics education within 12 months after initial election or appointment to the office, and again within 12 months after each subsequent election or appointment to the office in accordance with N.C.G.S. 160A-84. The ethics education shall cover laws and principles that govern conflicts of interest and ethical standards of conduct at the local government level. The ethics education may be provided by various qualified sources, including the North Carolina League of Municipalities and University of North Carolina School of Government, or other qualified sources of the Board's choosing. The Clerk shall maintain a record verifying receipt of the ethics education by each member of the City Council.

BE IT FURTHER RESOLVED that:

- A. A violation of this Code of Ethics may subject a Mayor or City Council Member to a censure resolution by the Hendersonville City Council; however, no such censure resolution shall be adopted until the person alleged to have committed the violation has been given notice of the alleged violation and provided with the opportunity to appear before the Board and be heard regarding the allegation.
- B. When a Mayor or City Council Member has a question as to the applicability of this code to a particular situation, he or she may apply, orally or in writing, to the City Attorney for advisory guidance. Upon receipt of a request for advisory guidance and based only upon the information given to the City Attorney, the City Attorney will provide advisory guidance to the Mayor or City Council Member. The City Attorney may retain outside legal counsel to advise him in connection with any request for advisory guidance. In no event will the City Attorney's advisory guidance excuse a Mayor or City Council Member from complying with the Code of Ethics or other applicable law.

Adopted this fourth day of November 2010.

Section 9, Item D.

Barbara G. Volk

Barbara G. Volk
Mayor, City of Hendersonville

ATTEST:

Tammie K. Drake

Tammie K. Drake, CMC
City Clerk

(SEAL)



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Complaint -

Resolution #10-1151

CODE OF ETHICS FOR THE CITY OF HENDERSONVILLE

Mayor / City Council – City of Hendersonville, North Carolina

Pertaining to City Council – Jennifer Hensley

1. Person Filing the Complaint:

Lynne Williams

*** Chadwick Ave.

Hendersonville, NC. 28792

(813) 808-1599 (cell)

2. Person Alleged to Have Committed an Unethical Act:

City Council Member – Jennifer Hensley

3. Ethics Provision Violation:

Section Two - A City Council Member Should Uphold the Integrity and Independence of His or Her Office - City Council Members should demonstrate the highest standards of personal integrity, truthfulness, honesty and fortitude in all their public activities in order to inspire public confidence and trust in City government. City Council Members should participate in establishing, maintaining, and enforcing, and should themselves observe, high standards of conduct so that the integrity and independence of their office may be preserved. The provisions of this Code should be construed and applied to further these objectives.

Section Four (B3) - City Council Member Should Perform the Duties of the Office Diligently - B. Adjudicative Responsibilities 3. City Council Members should be honest, patient, dignified and courteous to those with whom they deal in their official capacity, and should require similar conduct of their staff and others subject to their direction and control.

4. Reason for Complaint:

On December 3, 2021 at approx. 11:50pm, I received an email reply from J. Hensley to a message I sent to Mr. Connet with the City Council Members cc'd. Below is the beginning except of J. Hensley's email sent to only myself, in response.

"Lynn,

Please include me in your definition of gaslighting and misogyny. But then that doesn't actually fit the narrative of calling John names then, does it?"

To my knowledge, the email I sent to Mr. Connet used his title as the proper formality. This email from the Councilperson is inappropriate, threatening and lacking in integrity.

Section Two Reason: The City Council Member did not demonstrate the highest standards of personal integrity, truthfulness, honesty and fortitude in their public activities in order to inspire public confidence and trust in City government. The City Council Member did not participate in maintaining, and enforcing, and themselves did not observe, high standards of conduct so that the integrity and independence of their office may be preserved.

Section Four (B3) Reason: The City Council Member was not honest, patient, dignified and courteous to those with whom they deal in their official capacity, and did not require similar conduct of their staff and others subject to their direction and control.

A handwritten signature in black ink that reads "Lynne Williams". The script is cursive and fluid, with the first name "Lynne" and last name "Williams" clearly distinguishable.

Lynne Williams

December 8, 2021