

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: August 19, 2020

SUBJECT: Continued Discussion on Conditional Rezoning Application #R-2020-01-C, Tap Root Farms, Regional Commercial (RC) to Conditional District (CD-2020-01)

PRESENTER: Matt Champion, Project Development Planner
Autumn Radcliff, Planning Director

ATTACHMENTS: 1. Resolution of Consistency
2. Tap Root Conditions

SUMMARY OF REQUEST:

Conditional Rezoning Application #R-2020-01-C was initiated on January 31, 2020 and requests that the County conditionally rezone approximately 297 acres of land from Regional Commercial (RC) to a Conditional District (CD-2020-01). The project consists of 3 parcels located off Butler Bridge Road with a total acreage of 319.66 acres. The proposed rezoning does not include approximately 22.66 acres located directly adjacent to Butler Bridge Road. The property owners and applicants are Johnston Family Group, and the agent is William Alexander.

The applicant is proposing a residential development with a mix of single-family lots and townhomes that total 699 units. The development is required to be approved as a conditional rezoning due to the number of units. Conditional Districts allows for the Board of Commissioners to place conditions on the property to address community concerns and make the proposed development compatible with adjacent uses.

As required by the LDC, a neighbor compatibility meeting was held on Friday, February 21, 2020 in the King Street Meeting Room.

The Technical Review Committee (TRC) reviewed the application on March 3, 2020 and made a motion to forward the application to the Planning Board with conditions as discussed.

The Planning Board reviewed the conditional rezoning request at its May 21, 2020 meeting electronically. The Planning Board voted 6-2 to forward a favorable recommendation (with conditions as stated in the attachment hereto, "(Proposed) Conditions for Approval, R-2020-01-C, 'Taproot'").

The Board of Commissioners held a public hearing on July 16th, 2020 at the West Henderson High School Auditorium which met the legal notice requirements. The Board closed the hearing and discussed several potential conditions if approved. After asking several questions of the applicant, the Board tabled the discussion until the August 19th meeting. The Board stated that no additional public input would be allowed at the August 19th meeting but questions to staff or the applicant may be requested.

BOARD ACTION REQUESTED:

Board action is required. If the Board approves the rezoning, any conditions of approval should be stated with the motion. The Board must also adopt a resolution of consistency with the CCP.

Since a conditional zone is proposed by the applicant, and since, pursuant to N.C. Gen. Stat. §160D-703(b), “only those conditions mutually approved by the . . . petitioner may be incorporated into the zoning regulations”, prior to the Board giving final approval, should it be so inclined, the Board must, secure the applicant/petitioner’s agreement to any conditions proposed by the Board. The attached “(Proposed) Conditions” referred to above have already been approved by the applicant, and have space for the addition of more proposed conditions as a result of today’s Board action. As a result of §160D-703(b)’s requirement, a bifurcated procedure is proposed, as below.

If the Board is inclined to approve this matter, either of the motions, below, is suggested:

Suggested Motion 1 (no conditions beyond those previously agreed by applicant):

**I move that the Board approve with the previously agreed conditions, rezoning application #R-2020-01-C to rezone the Subject Area to a Conditional District (CD-2020-01) based on the recommendations of the Henderson County Comprehensive Plan, and with any conditions stated in the staff and master plan report and additional conditions as previously agreed by the applicant, and;
I move that the Board approve the attached resolution regarding the consistency with the CCP.**

OR

Suggested Motion 2 (new conditions proposed and not yet agreed by applicant):

I move that the Board give preliminary approval, subject to the applicant’s agreement in writing to the proposed additional conditions stated by the Board, to rezoning application #R-2020-01-C to rezone the Subject Area to a Conditional District (CD-2020-01) based on the recommendations of the Henderson County Comprehensive Plan, and with any conditions stated in the staff and master plan report and additional conditions as discussed, and I further move that this matter come back before this Board later in this meeting for a final vote after the proposed additional conditions are reviewed by the applicant and either agreed to or rejected.

If Suggested Motion 2 was approved, and after the applicant has either agreed to or rejected the Board’s additional proposed conditions, and the Board is inclined to approve the rezoning, the following is suggested:

Suggested Motion:

**I move that the Board approve with the previously agreed conditions, including those agreed today, rezoning application #R-2020-01-C to rezone the Subject Area to a Conditional District (CD-2020-01) based on the recommendations of the Henderson County Comprehensive Plan, and with any conditions stated in the staff and master plan report and additional conditions as discussed, and;
I move that the Board approve the attached resolution regarding the consistency with the CCP.**



RESOLUTION OF CONSISTENCY WITH THE COUNTY COMPREHENSIVE PLAN

WHEREAS, pursuant to N.C. General Statute §153, Article 18, the Henderson County Board of Commissioners exercises regulations relating to development within the County's jurisdiction; and

WHEREAS, the Henderson County Board of Commissioners (Board) adopted the Land Development Code (LDC) on September 19, 2007 and has amended the LDC to address new and changing issues;

WHEREAS, the Board desires to update and revise the regulations of the LDC; and

WHEREAS, the Planning Director and Planning Board provided recommendations regarding the proposed zoning map amendment with case #R-2020-01-C; and

WHEREAS, pursuant to N.C. General Statute §153-323, the Planning Director provided the prescribed public notice and the Board held the required public hearing on July 16, 2020; and

WHEREAS, N.C. General Statute §153-341 requires the Board to adopt a statement of consistency with the County Comprehensive Plan (CCP); and

NOW THEREFORE, BE IT RESOLVED by the Henderson County Board of Commissioners as follows:

1. That the Board reviewed the proposed map amendment (#R-2020-01-C, Tap Root Farms) and finds that it is reasonable, in the public interest and it is consistent with the CCP and the Growth Management Strategy located therein; and
2. That the Board determines that the proposed map amendment provides for the sound administration of the LDC while balancing property rights and promoting reasonable growth within the County; and
3. That this Resolution shall be retained in the Office of the Clerk to the Board of Commissioners.

THIS the 19th day of August 2020.

HENDERSON COUNTY BOARD OF COMMISSIONERS

BY: _____
WILLIAM LAPSLEY, Vice-Chairman

ATTEST:

Teresa Wilson, Clerk to the Board

[COUNTY SEAL]

Conditional Rezoning Application R-2020-01-C
“Taproot” property

Proposed Conditions if Rezoning Granted

A. Conditions Agreed to by Rezoning Applicant Prior to Board of Commissioners Approval¹²³

1. The Subject Property consists of 297 acres located on Butler Bridge Road in Henderson County (PINs: 9652-03-1362, 9642-82-3681, 9642-84-4544). The Subject Property currently consists of three tracts, shown as Tract 1, 2 and 3 on Exhibit A hereto. Those tracts for purposes of consideration of this application will be recombined into one tract, the perimeter of which is illustrated on the site plan.

2. The subject property is rezoned from RC to CD-2020-01.

3. Size and Scope of project (numbers are approximate, subject to confirmation when site plan is final):

a. Size of project: 297 acres.

b. There is permitted a maximum of 699 total residential units, of the following mix: 472 single family homes and 227 town homes. Single family lot sizes shall be a minimum of 7,100 square feet for at least 354 lots (75%) of the total single family lots on the subject property. All buildings to have a minimum 20-foot separation. All single-family lots will have side setbacks of ten feet.

c. Overall project density will not exceed 3.05 units per acre, including floodplain, greenway easements, or other open space areas proposed for conveyance to County or third-party conservation organization.

¹ As used herein, the terms Rezoning Applicant and Developer shall be interpreted to have identical meaning, to be the current property owners/rezoning applicants, and the ultimate developer of the property.

² The conditions covered by this Section I were either (i) derived from requirements of the Henderson County Land Development Ordinance, Chapter 42 of the Henderson Code; (2) suggested by members of the Henderson County Technical Review Committee and agreed to by the Applicant; (3) suggested by the Henderson County Planning Board and agreed to by the Applicant; or (4) self-imposed and agreed to by the Applicant.

³ These conditions are in addition to and intended to supplement the approved (multi-sheet) site plan and Chapter 42 of the Henderson County Code (herein “Chapter 42”). In case of any conflict between this document, the Chapter 42, and/or the approved site plan, the priority of interpretation is such that the approved site plan controls over section A. of this document and over the provisions of Chapter 42. However, as to any conflict, the provisions of Section B. of this document shall control over Section A. of this document, the approved site plan and Chapter 42. To the extent that any specification or development standard has been omitted from or is not addressed in the approved site plan or this document, the presumption is that the standard or specification in the LDC shall apply.

4. I-26 and outer boundary of project: All buildings must maintain 50-foot minimum setback from the I-26 right of way; no landscape buffer required along outer project boundary.

5. The development plan will provide for four separate phases of construction, with each Phase being those areas depicted as such on the site plan. The specific provisions and conditions for development set out below shall apply to each phase. Unit sales shall be allowed from an individual phase at such time as the individual phase has complied with the requirements of Chapter 42, Article III, Subpart A of the Land Development code (42-74 et seq.), for the rezoned conditional district, subject to such modifications and requirements as may be imposed on that district pursuant to this application.

6. Sidewalks not less than 5 feet in width shall be installed on at least one side of each roadway within the development, with a planted strip at least 2 feet in width between sidewalk and curb.

7. Interior roads – shall be built to Chapter 42 design standards for residential subdivisions; minimum roadway width of 27 feet including 2' valley curb & gutter. The central “spine” road will have a central planted median, with paved surface of 14' minimum paved lanes and 30" curb and gutter and will be built to NCDOT standards with minimum 60-foot road right of way. No pervious pavement shall be required within the development.

8. Traffic Impacts on Butler Bridge Road – The project will adhere to all recommendations of Traffic Impact Analysis approved by NCDOT. All NCDOT- required improvements must be complete not later than the completion of construction of 50% + 1 of the total units in each phase of the project, unless NCDOT directs otherwise. However, entrance improvements for each phase of the project shall be completed before a certificate of occupancy is issued for any structure in that phase of the project.

9. Parking:

a. Off-street: each unit shall have sufficient off-street parking for at least two automobiles. An additional 114 off-street spaces (.5 space per townhome unit) shall be provided, with locations as shown on the site plan. All the townhome units and associated off-street parking are in Phase 1, Phase 2 and Phase 4.

b. On-street Parking. Within the single-family area, on-street parking shall be allowed on only one side of the street. No on-street storage of boats, campers, recreational vehicles, or trailered apparatus shall be allowed.

10. Stormwater drainage facilities shall be built to NCDOT design standards for residential subdivisions; No standing water detention facilities allowed, only subsurface.

11. Fire hydrant locations shall be provided per Henderson County fire standards within development and be approved by the Fire Marshall and indicated on the development plan.

12. Subsurface utilities are required for all phases of the development.

13. Landscaping---including street trees, buffers, and natural areas--will be provided as required by Chapter 42 and noted on subdivision Master Plan.

14. Greenway: A permanent easement will be reserved along the French Broad River for use by the County as a greenway, in the approximate location shown on the master plan. The easement will be 50 feet in width where not restricted by topography or individual lot ownership, but in no case may the easement be less than 20 feet in width. Lots that adjoin the greenway may be smaller than standard in order to accommodate the greenway. This easement shall not be defeasible. Lots abutting the proposed future public greenway shall execute a disclosure statement. Other greenways and trails shall be as shown on the master plan.

15. Open Space:

a. The applicant will set aside approximately 121 acres of the Subject Property as open space. A minimum of 10% of the total area in the townhome sections shall be open space.

b. Open space areas (approximate size and location) shall be shown on the master plan. These areas shall be designated and (where applicable) dedicated for each phase of the project as plats are recorded. The open space does not have to be owned by the homeowners' association, but can be held by an individual, organization or non-profit or the County, subject to restrictions to prevent development.

c. All areas of open space located in the 100 year flood plain or the flood way shall be used only for those purposes allowed for conservation areas under Chapter 42, with the following exceptions: (i) The greenway area provided for in Section 14, above, which shall upon request of the County be conveyed to the County, and (ii) passive recreation of all types, and (iii) motor vehicle traffic shall be allowed for special event parking authorized by the homeowners' association ("HOA") or developer, maintenance of the property and/or environmental enhancement or cleanup projects (including projects to improve the bank condition, subsurface streambed condition, water quality, navigability, or fish and wildlife habitat in and along the existing water courses), for handicap access and parking for and at water access and enjoyment sites along Cane Creek and the French Broad River, (iv) Owners, Developer, or subsequent owners may use any portion of the open areas for the transmission of public or private utilities to service the development or surrounding properties and in conjunction therewith may convey interests and easements in the lands to public utilities, branches of Government, or other appropriate parties, (v) for conveyance to third parties or governmental entities as may necessary and reasonable for the establishment of, repair of, construction of or use of roads and streets, and (vi) public uses of the land for public recreation if the County, a non-profit approved by the County, or any Municipality takes ownership and control thereof for the public good. The exact location & size of the greenway areas to be conveyed to the County shall be approved by the County. The developer shall prepare and deliver to the County a properly prepared survey plat of that area. There shall be retained to the landowner (Developer) reasonable points of access to the French Broad River and to Cane Creek along and through the greenway area. Owner shall have the authority to designate those areas of access. The County will cover all closing costs. The Developer (landowner) shall provide a clear & unencumbered title to the property shown on the plat. A reasonable easement for access to the Greenway for maintenance of the Greenway shall be conveyed to the County across the roads of the subdivision, and across any open space area necessary to access the Greenway, with the course thereof being determined by Owner, but which in any event shall allow motor vehicle access to the Greenway. Following conveyance of the Greenway area, applicant shall have no further responsibility for these areas.

d. A perpetual restriction shall be in legal form imposed upon title to all the Open Areas, preventing the establishment of any new open water impoundments. This is for the purpose of preventing increased populations of wildfowl which could create a danger to aviation in the local area. Nothing herein shall apply to Cane Creek or the French Broad River, and applicant is not required to destroy or mitigate existing wetlands.

16. Resident amenities:

a. Central amenity area measuring at least 2.5 acres, including: (1) Olympic size (25 meters by 50 meters) swimming pool, with smaller splash pool; (2) clubhouse of at least 5,000 square feet of covered area, with storage space, restrooms and meeting space with tables, chairs, and restroom facilities; (3) patio/deck area with tables and chairs; (4) playground with equipment; (5) pickleball courts. Other amenities include playgrounds dispersed through the site, and a trail system as shown on the master plan, with benches and viewing platforms.

b. Amenity Areas shall be constructed and open to residents (transferred to HOA or third party organization) not later than the completion of construction of 50 % + 1 of the total units in Phase 1 of the project.

17. Attached as Exhibit "A-3" to the application is an example of the Avigation Easement, which applicant shall execute in substantially identical form by all the owner(s) of property making up the subject development prior to the sale of any lots in the development. Further, any owner (including the developer) of residential property who sells property within the Tap Root Development is required to disclose to buyers that: (1) the property is located in close proximity to the Asheville Regional Airport; (2) the property is subject to the Avigation Easement (together with the recording information regarding the Avigation Easement in the Henderson County, North Carolina Registry.

18. Street lighting: Lighting will be installed in accordance with the following:

- Light Level - .5 fc average with 4-6 Avg/Min uniformity (or compliant with current IES/ANSI standards for residential street lighting - reference RP-8-18)
- Pole Mounting Height - Max 25 ft (spacing dependent on design layout to meet recommended light level)
- Pole Material - Aluminum or Concrete
- B-U-G Rating (Back-Up-Glare) - Not to exceed B2-U0-G2 (B1-U0-G1 preferred) Light Source - LED, 3500K or 4000K Color Temp (not to exceed 4000K)

19. Street Trees—Street trees shall be installed per Chapter 42 requirements, using County-approved species.

20. Building Code - Builder/ Developer to adhere to Chapter 42 requirements whenever such requirements exceed NC Building Code requirements.

21. There must be a minimum separation of 20 feet between buildings in the townhome area. All single-family lots shall have a 10-foot side setback.

22. Submit to and receive approval of a water utilities plan from the City of Hendersonville and comply with City of Hendersonville regulations, or in the alternative from any other public water utility provider or authority.

23. Submit to and receive approval of a sewer utilities plan from the Cane Creek Sewer District and provide proof of MSD wastewater treatment allocation.
24. Apply for and receive a swimming pool permit from the Henderson County Department of Public Health Division of Environmental Health prior to the pool construction.
25. Submit for prior approval all building plans for all structures to the County Inspections Department.
26. Apply for a floodplain, stormwater, and soil erosion control permit from the County for each phase of development.
27. Require cluster mailboxes per the standards and requirements of the USPS and identify on the development plan an area with appropriate vehicle access and parking.
28. Apply for and execute an encroachment agreement with NCDOT for utility work within the right of way of Butler Bridge Road and I-26.
29. Apply for and receive a NCDOT street access permit and comply with all required road improvements identified by the TIA and NCDOT.
30. Pay in full all fees for permits, as each fee is assessed or becomes due.
31. The approval authority for each phase of the project is delegated to the Henderson County Planning Board. To the degree any phase exceeds 300 units or lots, as shown on the Master Site Plan, the same are deemed approved and the Board of Commissioners assigns to the planning board its authority to review and approve.
32. The County shall retain the right to suspend construction and the issuance of building permits if the developer is found by the County to be in noncompliance with any one of the conditions imposed on the Tap Root Project.
33. Applicant shall implement the development plan and maintain compliance with all the conditions set out herein, all the features of the approved master plan, and all applicable provisions of Chapter 42 to the extent not waived or modified herein.
33. Applicant has elected to carry out some of its responsibilities through a Homeowners Association (HOA), and the use of private restrictive covenants, as allowed by the Henderson County Code. The forms of the organizational documents and bylaws for the HOA, as well as the restrictive covenants, and other documents governing the operation of the HOA and the project (herein collectively "HOA documents") shall be reviewed by the County Attorney as to their legal sufficiency to satisfy this limited purpose prior to issuance of the permission of the Planning Office to record the final plat. To this end, the County reserves the right to review any amendment or revision to the HOA documents prior to its effectiveness to ensure continued compliance with this conditional zoning ordinance, and other applicable County ordinances.
34. Failure to comply with any of the provisions of this conditional zoning ordinance or Chapter 42 (except as waived or modified hereby), or other applicable provisions of the County ordinances, shall subject the applicant or its successors to penalties at law or in equity as provided

for in Chapter 42, other County ordinances, or North Carolina law, including repeal or amendment to this conditional zoning enactment.

35. Open Space. The applicant is required to set aside 25% open space. Open space should be recorded with the register of deeds and is required to remain as shown on the approved site plan and cannot be developed. The open space does not have to be owned by the HOA, but can be held by an individual, organization or non-profit.

36. HOA. The developer is required to set up a HOA (Homeowner Association) and subsequent documents should be reviewed and approved by the County Attorney prior to recording of such restrictions.

37. Common Area/Open Space. Common area shall be provided for 10% of the total area in the townhome sections.

38. Townhome Layout. There shall be a minimum space of 20 feet between buildings and a maximum building length of 150 feet per building.

39. Subsurface Utilities. Subsurface utilities are required for the townhome sections.

40. Impervious Pavement. All paved surfaces (roads, parking areas, drives, sidewalks, etc.) may be impervious pavement or surfaces within the site, including the townhome phases, subject however to a Stormwater Phase II permit for new impervious surfaces as set forth below.

42. Pedestrian Facilities. There shall be 1 linear foot of sidewalk or trail for every linear foot of improved or newly proposed roadway within the development. The sidewalk or trail must be at least 5 feet in width.

43. Private Roads. The applicant is proposing private roads, which are allowed. Certification by NCDOT is required to be on the final plat if public roads are proposed.

44. Buffering and Setbacks. All structures shall be setback 50 feet from I-26 and that a B2 buffer (as defined in Chapter 42) is required within this setback.

45. Traffic Impact Analysis (TIA) Requirements. Any road improvements identified in the TIA and as approved and required by NCDOT shall be completed as a condition of approval. (see letter from NCDOT).

46. Erosion control permit required in phases as defined by the County.

47. Stormwater Phase II permit required for all new impervious surfaces.

48. If utilizing fill option within flood hazard areas, fill work must be completed prior to subdividing lots and record plat thereof.

49. ADA accessibility requirements for USPS cluster boxes shall be complied with.

50. Amenities are required to be built with ADA compliance.

51. An approved fire suppression plan is required.

52. 27' wide roads within project.
53. Pool requires Department of Health overview.
54. Developer shall obtain a capacity letter from the Metropolitan Sewerage District of Buncombe County.
55. Traffic Impact Analysis shall be performed, and all necessary improvements shall be installed.
56. Any damage to existing NCDOT roadways during construction must be fixed immediately.
57. Developer must obtain an encroachment agreement with NCDOT for any utility work within the public right-of-way.
58. Developer must secure the installation of waterline from N. Rugby Road and Butler Bridge Road intersection to site if City of Hendersonville waterline extension approved by the County.
59. Individual water service for each unit (both single-family and townhomes) required.
60. Developer may not permit installation of fruit bearing trees on property.
61. The Board of Commissioners delegates review and approval of all subsequent development plans to the Planning Board provided that all substantial changes be referred to the Board of Commissioners as an amendment to the conditional zoning district.
62. The applicant includes all conditions agreed to and approved by the Board on the site plan that shall be recorded with the Henderson County Register of Deeds.

All of the above have been agreed to by the Applicants.

WILLIAM M. ALEXANDER, JR.
Attorney for the Applicants

B. Conditions Imposed by Board of Commissioners and Agreed to By the Rezoning Applicant Prior to Final Rezoning Approval

1. Change Paragraph 16.B. to the following:

Amenity Areas shall be constructed and open to residents not later than the completion of construction of the total units in Phases 1 and 2 of the project. Ownership and control of the Amenity Areas shall be transferred to the HOA upon the HOA's request, at any time after the sale and transfer of a total of 200 units.

2. Add the following paragraph:

Each phase will be treated as a separate project for purposes of application of the conditions which are applicable to the entire development. Two or more phases may be under construction simultaneously, but developer shall take reasonable care to not create unsightly conditions or safety hazards in partially developed phases. Roads and sidewalks that are completed within a phase that are intended to extend into an adjoining phase still under construction shall, to the degree they are not actively used for housing, be restricted from access by residents by signage and reasonable barriers. This is solely for safety and appearance issues, and shall not be construed as preventing developer from utilizing completed sidewalks and paths for the recreational use and exercise by residents.

3. Add the following paragraph:

In the interest of aviation safety, Developer shall inform the Asheville Airport, through the office of its Chief Executive Officer, of the following events and according to the following time requirements:

- a. At least fifteen days prior to commencing constructions of a residential habitation structure in any particular phase, Developer/Applicant shall give written notice to the Airport of the phase in which this construction is to commence, and shall provide the Airport with a map of the area of the phase in which such construction will be conducted. Once notice is given as to each phase, it shall be deemed to give notice as to that entire phase.
- b. Upon learning of any condition created by aircraft travel over the development which in the opinion of Developer/Applicant would constitute an immediate hazard to the health, safety or well being of any resident of the subdivision or of the surrounding area, Developer/Applicant shall by reasonable means give notice to the Airport of that condition.

4. Add the following paragraph:

County to inspect each phase to determine, within the expertise of county staff, compliance by the developer with the conditions imposed on the rezoning. If not in compliance, all phases of the project will be suspended until compliance is demonstrated by the developer.

5. Add the following paragraph:

At end of each phase (part of conditional inspection), the developer shall show proof that at least 50% of labor, materials and subcontractors came from Henderson County. If not, show a concerted

effort to do so and reasons why not. This will need to be reviewed and approved before proceeding to next phase.

6. Add the following paragraph:

The applicant/developer shall upon request of Fletcher Fire & Rescue Dept., Inc., install at applicant/Developer's cost a water hydrant at or near the entrance to the subdivision, in a place specified by Fletcher Fire & Rescue Dept., Inc., for the purpose of providing water to fire trucks responding to emergencies in the subdivision or in other areas of the County. The hydrant shall be of such design as is specified by Fletcher Fire and Rescue. An area around the hydrant sufficient to allow its ready use and maintenance shall be dedicated to that use on a perpetual basis. The details and method of such dedication shall be as determined by the County Attorney, in cooperation with the attorney for Applicant.

All of the above have been agreed to by the Applicants.

WILLIAM M. ALEXANDER, JR.
Attorney for the Applicants