

**DRAFT MINUTES**

STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

BOARD OF COMMISSIONERS  
MONDAY, MAY 17, 2021

The Henderson County Board of Commissioners met for a Special Called Meeting/Public Hearing at 5:00 p.m. in Thomas Auditorium of Blue Ridge Community College on Eagles Drive, Flat Rock for consideration of Conditional Zoning Application #R-2021-01-CD (Asphalt Plant).

Those present were: Chairman William Lapsley, Vice-Chair Rebecca McCall, Commissioner Mike Edney, Commissioner Daniel Andreotta, Commissioner David Hill, County Manager Steve Wyatt, Assistant County Manager Amy Brantley, Attorney Russ Burrell, Clerk to the Board Teresa Wilson, and Clerk to the Board (training) Denisa Lauffer.

Also present were: Director of Business and Community Development John Mitchell, Planning Director Autumn Radcliff, Code Enforcement Director Matt Champion, PIO Kathy Finotti & Assistant Engineer Deb Johnston – videotaping, Deputies Mike Marsteller, Larry Pierson, and Michelle Hensley as security.

**CALL TO ORDER/WELCOME**

Chairman Lapsley called the meeting to order and welcomed all in attendance. Chairman Lapsley noted that the Board would be conducting this hearing under procedures allowed by N.C. Gen. Stat. §153A-52.

*Commissioner Edney made the motion to go into public hearing. All voted in favor and the motion carried.*

1) **“Spokesmen”**. NCGS 153A-52 allows Board of Commissioners to designate “spokesmen” at public hearings for groups of persons supporting or opposing a position. In this case, the Board designates as “spokesmen” advocating for the approval of the rezoning the applicant and his attorney, and as “spokesmen” advocating for the denial of the rezoning the “Friends of East Flat Rock” group and their attorney.

2) **Procedure**. The procedure for the public hearing has been transmitted to the “spokesmen” and has been provided in the public records folder for this matter. The procedure will be as follows:

- A. Opening.** The Board will open the public hearing, and the Henderson County Planning staff will make a brief and neutral presentation about the factual and procedural status of this application.
- B. Proponents.** The applicant and his attorney (including any electronic presentations they wish to present, and any other persons they wish to present) will have **45** minutes to advocate their position.
- C. Opponents.** The “Friends of East Flat Rock” group and their attorney (including any electronic presentations they wish to present, and any other persons they wish to present) will have **45** minutes to advocate their position.
- D. Closing.** The Board will ask any questions they may have of the presenters. Then the public hearing will be closed. The Board may then discuss the matter or may consider the matter until a later meeting.

N.C. Gen. Stat. §153A-52 (i) and (ii), by designating spokespersons for the “for” and “against” viewpoints. Under these rules, County staff will provide a brief outline of the application, then the applicant and the applicant’s representatives will receive 45 minutes to present their case. At the close of the applicant’s presentation, the opponents and their representatives will receive 45 minutes to present their case. The Board designates the applicant’s counsel, Brian Gulden of the Van Winkle Law Firm, as the controller of time for the applicant’s presentation. The Board designates the attorney for the “Friends of East Flat Rock”, John Noor, of the Roberts & Stevens Law firm, as the controller of time for the opponents’ presentation.

APPROVED:

At the close of the opponents' presentation, the Board may ask questions of any speaker.

**PUBLIC HEARING FOR CONDITIONAL REZONING APPLICATION #R-2021-01-C, HS SHIPMAN, FROM COMMUNITY COMMERCIAL (CC) TO CONDITIONAL DISTRICT (CD-2021-01)**

Matt Champion stated Rezoning Application #R-2021-01-C was submitted on February 19, 2021 and requests that Henderson County conditionally rezone approximately 6.5 acres of land from Community Commercial (CC) zoning district to a Conditional District (CD-2021-01) to construct a new asphalt plant. The subject area is located on a portion of PIN: 9568-37-1990 along Spartanburg Hwy (US176). The property owner is Jeffrey B. Shipman Enterprises, Inc., the applicant is HS Shipman, and agents are Warren Sugg and Brian Gulden.

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 Tuesday, March 20, 2021. A copy of the meeting report will be sent to the Board of Commissioners.

The Technical Review Committee (TRC) reviewed the application on April 6, 2021.

The Planning Board reviewed the conditional rezoning request at its April 15, 2021 meeting and voted 5-2 to send forward an unfavorable recommendation.

**Public Notice:**

Before taking action on the application, the Board of Commissioners must hold a public hearing. In accordance with §42-303 and §42-346 (C) of the Henderson County Land Development Code and State Law, notice of the May 17, 2021 public hearing regarding rezoning application #R-2021-01-C was published in the Hendersonville Lightning on May 5<sup>th</sup> and May 12<sup>th</sup>. The Planning Department sent notices of the hearing via first class mail to the owners of properties within 400 feet of the Subject Area on April 30, 2021 and posted signs advertising the hearing on May 3, 2021.

**Board Action Requested:**

Before taking action on the rezoning request, the Board of Commissioners must hold a public hearing.

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.

**Conditional Districts**

Conditional rezoning's are:

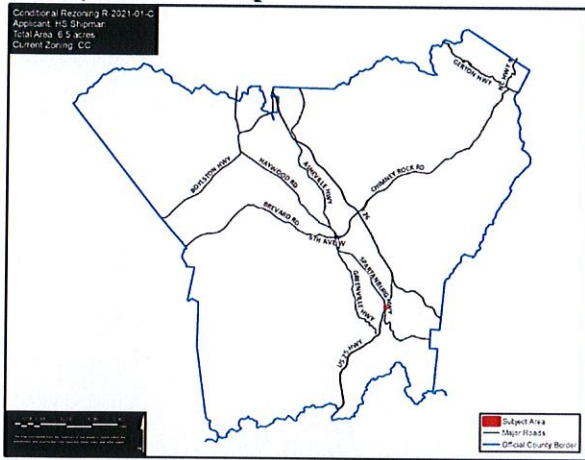
- Legislative decisions
- Require a site-specific plan (only what is on the plan is allowed)
- The BOC may require additional conditions of the development, provided the developer agrees to those conditions.

Process provides protection to adjacent properties.

Application Summary

- Conditional Rezoning Request: R-2021-01-C
- Submitted on February 19, 2021
- Owners: Jeffrey B. Shipman Enterprises, Inc.
- Applicant: HS Shipman
- Agent: Warren Sugg & Brian Gulden
- Rezone from a Community Commercial (CC) Zoning District to a Conditional District (CD-2021-01)
- Subject Area is 6.5 Acres
- 5.4 Acres to Remain Community Commercial (CC)

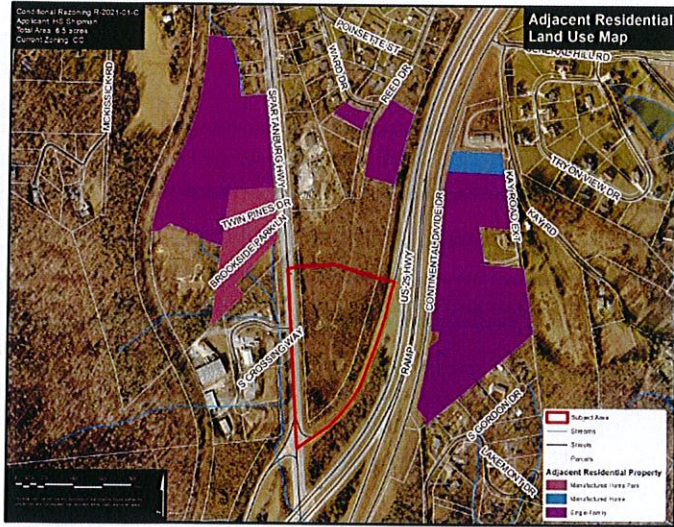
County Context Map



Aerial Map



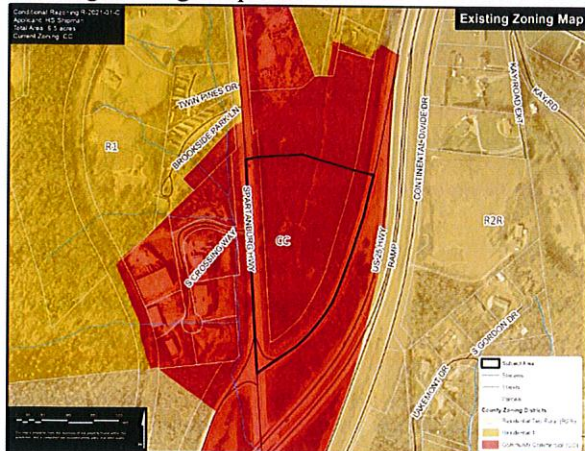
Adjacent Residential Use Map



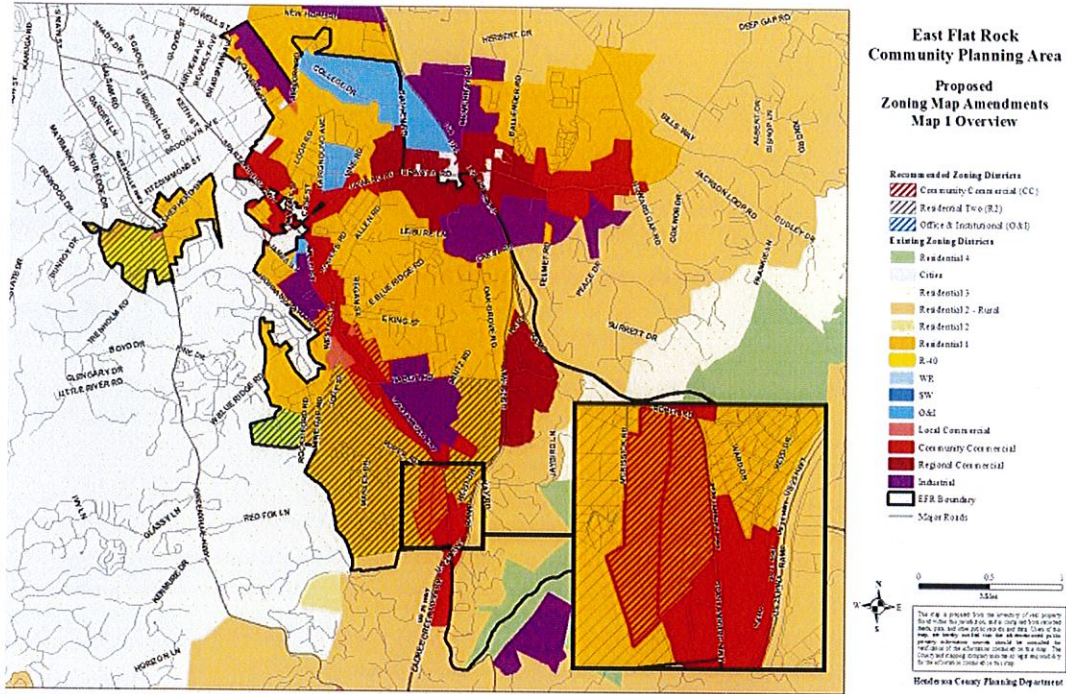
**LDC Supplemental Requirements 10.1 for Asphalt Plant**

- (1) Site Plan. Major *Site Plan* required in accordance with §42-331 (Major Site Plan Review).
- (2) Lighting. *Adequate lighting* shall be placed in areas used for vehicular/pedestrian access including, but not limited to: stairs, sidewalks, crosswalks, intersections, or changes in grade. *Lighting mitigation* required.
- (3) Dust Reduction. Unpaved *roads, travel ways* and/or parking areas shall be treated to prevent dust from adverse effects to adjacent properties.
- (4) Separation. An *asphalt plant* shall not be constructed or newly located within:
  - a. One-half (½) mile of an existing *school, library, day care facility, healthcare facility* and/or *religious institution*; and
  - b. Five hundred (500) feet of an existing *dwelling unit* (located in a *residential zoning district* and not located on the same property as the *use*).
- (5) Perimeter Setback. One hundred (100) feet.
- (6) Security. The operations of an *asphalt plant* shall be totally enclosed by: (1) a security fence or wall at least eight (8) feet in height; or (2) a fireproof *building*. Entrances and exits should be secured and locked during non-operating hours.

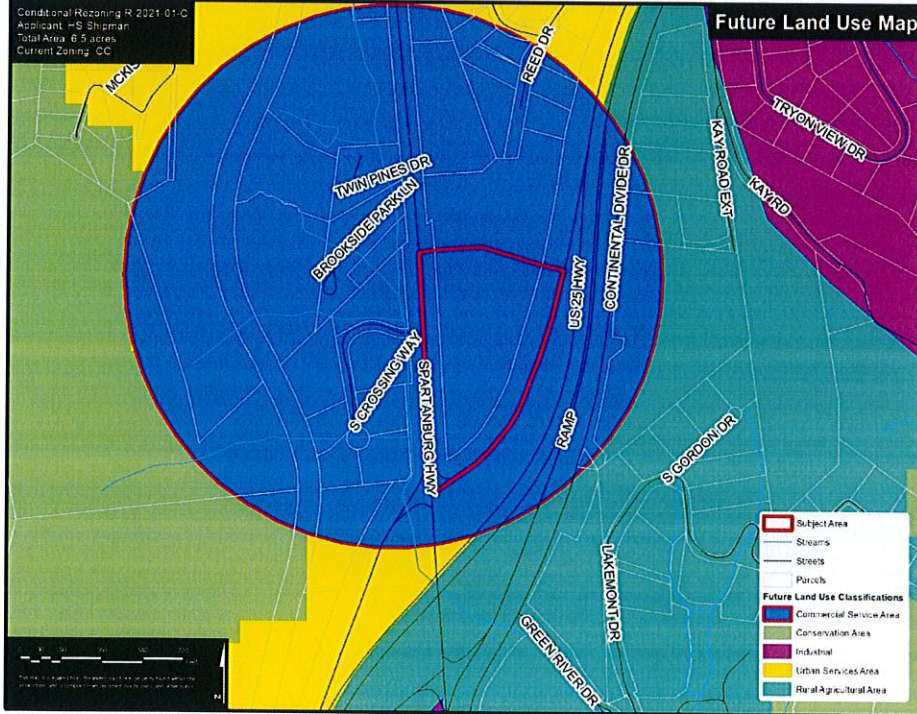
Existing Zoning Map



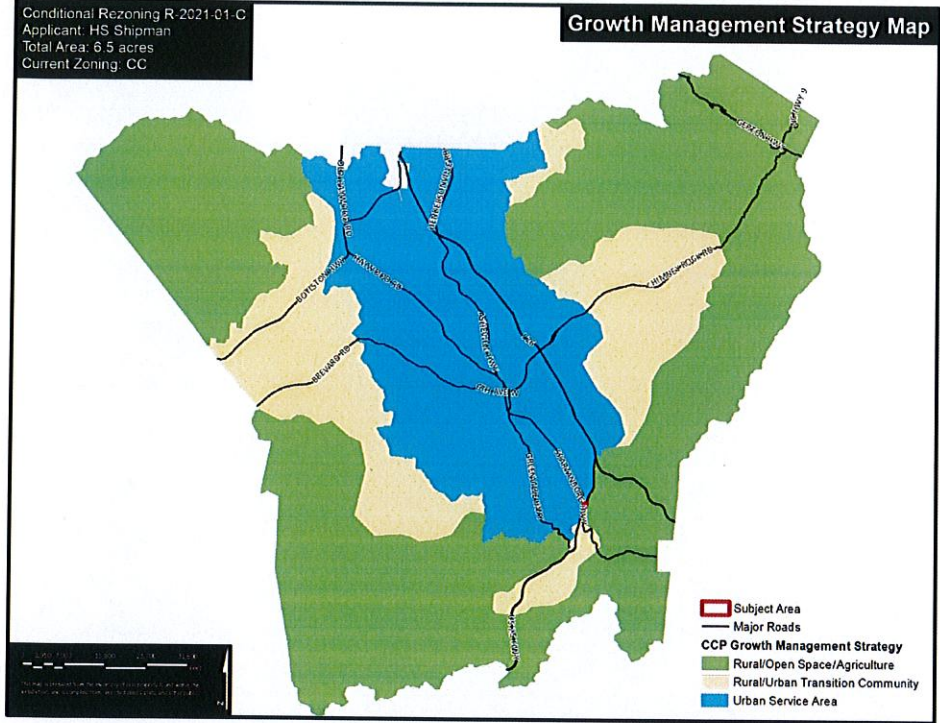
### EFR Recommended Zoning Changes



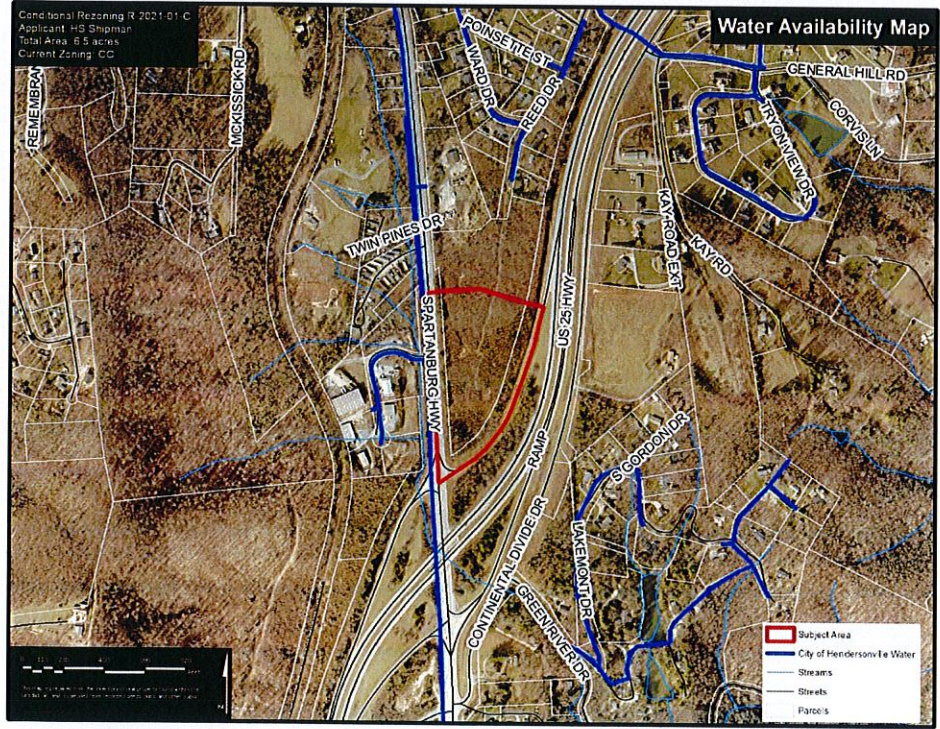
### CCP Future Land Use Map



### Growth Management Strategy Map



### Water Availability Map





and must have a subject line reading “May 17<sup>th</sup> public comment”, must be signed, and must be received at that address by not later than 5:00 p.m. on May 16, 2021.

- Postal mail intended to act as public comment must specify that it is intended as public comment for the May 17<sup>th</sup> meeting of the Board of Commissioners, must be received by 5:00 p.m. on May 16, 2021, and must be addressed to:

Public Input  
c/o Clerk to the Board of Commissioners  
1 Historic Courthouse Square, Suite 1  
Hendersonville, NC 28792

- All public comment received by 5:00 p.m. on May 16, 2021 will be sent to each of the Board members by staff for their review prior to the meeting. Public comments received will not be read aloud during the meeting.

**List of Conditions for Conditional Rezoning Application #R-2021-01-C Recommended by Henderson County staff**

Conditions proposed by Planning Department staff to bring such a district into conformity with other districts under the Land Development Code (LDC §42-52):

1. Meet all supplemental requirements for proposed use (LDC §42-63)
2. Must obtain and provide a copy of all permits required by North Carolina.

Conditions proposed by the Erosion/Sedimentation/Flood Department:

3. High-density storm water permit required for the entire site.
4. Revised erosion control permit for new use

Conditions proposed by the Building/Inspections Department:

5. Compliance with the 2018 North Carolina Building Code
6. Compliance with the 2017 North Carolina Building Code for electrical

Conditions proposed by the Environmental Health Unit of the Department of Public Health:

7. Apply and obtain a septic permit for private on-site septic system.

Conditions proposed by the NCDOT:

8. Revised NCDOT driveway permit

Conditions proposed by City of Hendersonville Water & Sewer Department:

9. Apply for individual tap.
10. Backflow RPZ required for commercial use.

The Board of Commissioners delegates review and approval of all subsequent development plans to the Planning Board provided that all changes be referred to the Board of Commissioners as an amendment to the conditional zoning district.

The Applicant made a presentation (including any electronic presentations within reasonable technical ability of Blue Ridge Community College and the County) in favor of the rezoning request.

Bryan Gulden, attorney for the applicant, Warren Suggs of Civil Design Concepts, Katherine Suttan of Astec Inc., Anna Franklin of Bunnell Lammons Engineering, Dr. Laura Green of Senior Environmental Engineering, Lynn Carmichael of Ace Appraisals, Inc., and applicant Jeff Shipman spoke in favor of the Asphalt Plant.



The Opponent made a presentation (including any electronic presentations within reasonable technical ability of Blue Ridge Community College and the County) opposing the rezoning request. John Noor, attorney for the opponent, Urban Planner Chris Collins, camp owner Nancy Wilson, co-owner of Liquid Logic Kayaks Shane Benedict, adjacent property owner Shannon Nicholson, Greg Jernigan of Mountain True, real estate broker Chris Gragtmans, owner of Paramount Produce Matthew Elledge, mobile home park owner (adjacent property) Bruce Griffith spoke in opposition of the Asphalt Plant.

*Chairman Lapsley made the motion to go out of public hearing. All voted in favor and the motion carried.*

The Board of Commissioners' presented questions to staff, the applicant, and opponents.

*Commissioner Edney made the motion that the Board delay action and schedule a special called meeting for June 1<sup>st</sup> at 6:00 p.m. to allow the Board time to evaluate information received during the public hearing. The motion passed 4-1 with Vice-Chair McCall voting nay.*

The special called meeting will be held in the Boardroom of the Historic Courthouse on Main Street, Hendersonville NC, and will be the only topic for the meeting.

**ADJOURN**

*Chairman Lapsley made the motion to adjourn at 7:50 p.m. All voted in favor and the motion carried.*

Attest:

\_\_\_\_\_  
Teresa L. Wilson, Clerk to the Board  
Denisa A. Lauffer, Clerk in training

\_\_\_\_\_  
William Lapsley, Chairman