

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: November 16, 2022

SUBJECT: Public Hearing for Proposed Right of Way Closure (Portion of Furniture Drive)

PRESENTER: Autumn Radcliff, Planning Director
Austin Parks, Planner

ATTACHMENTS: (1) Site Map depicting proposed ROW closure
(2) North Carolina General Statute 153A-241
(3) Applicants Petition for Road Closure
(4) Order of Closure
(5) PowerPoint

SUMMARY OF REQUEST:

Planning and Property Addressing staff have received the attached petition to close a portion of Furniture Drive right-of-way. Under North Carolina General Statute (NCGS) 153A-241, counties have the power to close any public road or easement not within a city, except public roads or easements for public roads under control of the Department of Transportation. To close any road, the Board must:

- Vote to adopt a resolution declaring its intent to close the public road or easement.
- Call and notice a public hearing on closing the road or easement, with notice “reasonably calculated to give full and fair disclosure of the proposed closing to be published once a week for three successive weeks before the hearing, a copy of the resolution to be sent by registered or certified mail to each owner as shown on the county tax records of property adjoining the public road or easement who did not join in the request to have the road or easement closed, and a notice of the closing and public hearing to be prominently posted in at least two places along the road or easement”.
- Hold the public hearing, where the Board must “hear all interested persons who appear with respect to whether the closing would be detrimental to the public interest or to any individual property rights”.
- Then, if the Board “is satisfied that closing the public road or easement is not contrary to the public interest and (in the case of a road) that no individual owning property in the vicinity of the road or in the subdivision in which it is located would thereby be deprived of reasonable means of ingress and egress to his property, the Board may adopt an order closing the road or easement.”
- File a copy of the Board’s order with the Register of Deeds.

The Board approved a Resolution of Intent to close the ROW and to hold a public hearing on this ROW closure at its October 19, 2022, meeting.

PUBLIC NOTICE:

The public hearing notice was advertised in the Hendersonville Lightning on October 26th, 2022, November 2nd, 2022, and November 9th, 2022, and the property was posted on November 4th, 2022. Notices of the hearing were mailed on October 28th, 2022, to the adjacent property owners.

BOARD ACTION REQUESTED:

Board of Commissioner action is required to close a right of way.

Suggested Motion:

I move that the Board approve the right of way closure for a portion of Furniture Drive and sign the Order of Closure.

0621385984 CHEWAR, MIKE J.;CHEWAR, 0621387508 SUNSET MTN

Proposed Road Right of Way Closure of Furniture Drive

PROPERTIES, LLC. 0621380100 SUNSET MTN PROPERTIES, LLC

0621381278
SUNSET MTN
PROPERTIES LLC

0621380263 DALTON,
VANCE CLIFFORD
HEIRS;DALTON, JOHN G

0621382037
SUNSET MTN
PROPERTIES, LLC

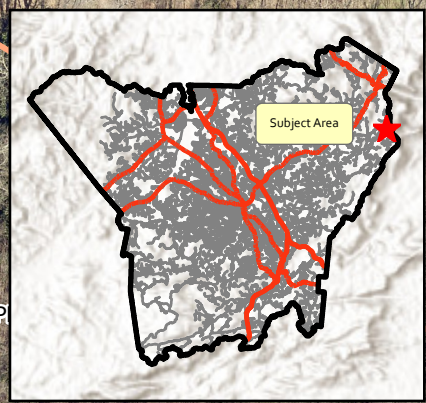
0621389033
METZGER, JAMES
K;METZGER, CYLVEA T

0621372876
HARDIN,
DAVID

FURNITURE DR

Legend

- County Border
- Parcels
- Request of Closure



0 25 50 100 150 Feet

TN

THIS IS NOT A SURVEY. All information or data provided, whether subscribed, purchased or otherwise distributed, whether in hard copy or digital media, shall be at the user's own risk. Henderson County makes no warranties or guarantees, including the warranties of merchantability or of fitness for a particular purpose. Map data is not appropriate for, and is not to be used as, a geodetic, legal, or engineering base system. The data is not intended as a substitute for surveyed locations such as can be determined by a registered Public Land Surveyor, and does not meet the minimum accuracy standards of a Land Information System/Geographic Information System Survey in North Carolina (21 NCAC 56.1608).

Applicant: Jamie Holtje and Cloven Cliffs HOA



§ 153A-241. Closing public roads or easements.

A county may permanently close any public road or any easement within the county and not within a city, except public roads or easements for public roads under the control and supervision of the Department of Transportation. The board of commissioners shall first adopt a resolution declaring its intent to close the public road or easement and calling a public hearing on the question. The board shall cause a notice of the public hearing reasonably calculated to give full and fair disclosure of the proposed closing to be published once a week for three successive weeks before the hearing, a copy of the resolution to be sent by registered or certified mail to each owner as shown on the county tax records of property adjoining the public road or easement who did not join in the request to have the road or easement closed, and a notice of the closing and public hearing to be prominently posted in at least two places along the road or easement. At the hearing the board shall hear all interested persons who appear with respect to whether the closing would be detrimental to the public interest or to any individual property rights. If, after the hearing, the board of commissioners is satisfied that closing the public road or easement is not contrary to the public interest and (in the case of a road) that no individual owning property in the vicinity of the road or in the subdivision in which it is located would thereby be deprived of reasonable means of ingress and egress to his property, the board may adopt an order closing the road or easement. A certified copy of the order (or judgment of the court) shall be filed in the office of the register of deeds of the county.

Any person aggrieved by the closing of a public road or an easement may appeal the board of commissioners' order to the appropriate division of the General Court of Justice within 30 days after the day the order is adopted. The court shall hear the matter de novo and has jurisdiction to try the issues arising and to order the road or easement closed upon proper findings of fact by the trier of fact.

No cause of action founded upon the invalidity of a proceeding taken in closing a public road or an easement may be asserted except in an action or proceeding begun within 30 days after the day the order is adopted.

Upon the closing of a public road or an easement pursuant to this section, all right, title, and interest in the right-of-way is vested in those persons owning lots or parcels of land adjacent to the road or easement, and the title of each adjoining landowner, for the width of his abutting land, extends to the center line of the public road or easement. However, the right, title or interest vested in an adjoining landowner by this paragraph remains subject to any public utility use or facility located on, over, or under the road or easement immediately before its closing, until the landowner or any successor thereto pays to the utility involved the reasonable cost of removing and relocating the facility. (1949, c. 1208, ss. 1-3; 1957, c. 65, s. 11; 1965, cc. 665, 801; 1971, c. 595; 1973, c. 507, s. 5; c. 822, s. 1; 1977, c. 464, s. 34; 1995, c. 374, s. 1.)



HENDERSON COUNTY PLANNING DEPARTMENT
100 N. King Street | Hendersonville, NC 28792 | 828-697-4819

LOCAL ROAD AND EASEMENT ABANDONMENT PETITION FORM

***Requires Pre-Application Meeting**
***Requires 100% of property owner signatures**

APPLICANT INFORMATION:

Name: Jamie Holtje Email: jsholtje@gmail.com
Address: 341 Furniture Dr • Hendersonville
Telephone: 262.880.6448

Name of road or easement to be abandoned
(If easement is not named, please provide a
Parcel(s) PIN for identification)

A section of Furniture Dr.
from Plum Branch Circle to
the paved culdesac of Furniture Dr.

PETITION:

We the under signed, being all of the property owners that have a deeded ROW to road or
easement _____ do hereby request Henderson County Board of
Commissioners to approve the closure of the road or easement and certify Order of Closures.

PROPERTY OWNERS:

Name	Address	Signature
<u>Cylvea Metzger</u>	<u>242 Furniture Dr</u>	<u>Cylvea Metzger</u>
<u>James Metzger</u>	<u>" " "</u>	<u>James Metzger</u>
<u>Sunset Mtn Properties</u>	<u>70 Hill Top Ln • Rockledge, FL</u>	<u>Jamie S Holtje Dir</u> <u>Philip M Holtje Director</u>
<u>Claven Cliff HOA</u>	<u>341 Furniture Dr</u>	<u>Jamie S Holtje Sec/Treas</u> <u>Philip M Holtje President</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

Attach Board Approval

**Henderson County
North Carolina**

Before the Board of Commissioners

**ORDER CLOSING A PORTION OF
RIGHT-OF-WAY FOR FURNITURE DRIVE**

THIS MATTER came on for hearing before the Henderson County Board of Commissioners at its regular November 16, 2022, meeting, pursuant to N.C. Gen. Stat. §153A-241, on the issue of closing a portion of right-of-way for Furniture Drive and was heard by the Board after public hearing. The Board of Commissioners makes the following findings:

1. This matter first came before the Board of Commissioners on at the Board's regular meeting on October 19, 2022, on the petition by Jamie and Phil Holtje, on behalf of Sunset Mountain Properties LLC, Cloven Cliffs HOA Board, James K Metzger, and Cylvea T Metzger to close a portion of Furniture Drive located in Henderson County.
2. At the Board's October 19, 2022, the Board adopted a resolution "declaring its intent to close" the said portion of Furniture Drive.
3. A map showing the area under consideration is shown on the attachment hereto, Exhibit A, (indicated by a broken yellow line).
4. A notice of this Board's November 16, 2022, hearing was published once a week for three successive weeks before the hearing in the *Hendersonville Lightning*, a notice of the closing and public hearing was mailed to adjacent property owners as shown on the county tax records, and a notice of the closing and public hearing to be prominently posted in at least two places along the road or easement.
5. Before the Board on November 16, 2022, the Board heard "all interested persons who appear with respect to whether the closing would be detrimental to the public interest or to any individual property rights" are required by N.C. Gen. Stat. §153A-241.
6. After such hearing, the Board is satisfied and finds:
 - A. That closing the public road or easement is not contrary to the public interest; and,
 - B. That no individual owning property in the vicinity of the road or in the subdivision in which it is located would thereby be deprived of reasonable means of ingress and egress to his property.

WHEREFORE IT IS ORDERED that a portion of Furniture Drive located in Henderson

County as shown on the attached map is hereby closed. It is further ordered that a certified copy of this Order shall be filed in the office of the register of deeds of the county.

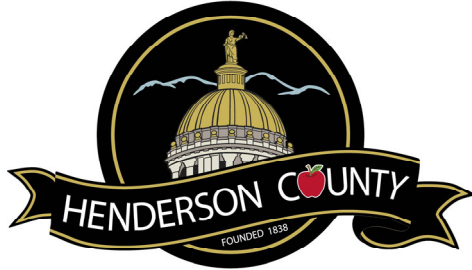
Adopted by the Board by motion duly made this the 16th day of November 2022.

BOARD OF COMMISSIONERS
OF HENDERSON COUNTY

By: _____
William G. Lapsley, Chairman

Attest:

Denisa Lauffer, Clerk to the Board



ROW Closure: Portion of Furniture Drive

Henderson County Board of Commissioners

Public Hearing

November 16th, 2022

1

Application Summary

- Request submitted to close a portion of ROW on Furniture Drive in Henderson County
- Petitioner are Jamie and Phil Holtje, on behalf of Sunset Mountain Properties LLC, Cloven Cliffs HOA Board, James K Metzger, and Cylvea T Metzger
- On October 19th, BOC approved resolution of intention to close ROW and set a public hearing
- Public notice of the hearing was given
 - Notice in the Hendersonville Lightning on October 26th, November 2nd, and November 9th
 - Notice to adjacent property owners was mailed on October 28th
 - Notice posted on property on November 4th

2

Aerial Map



3

Photos of the Portion of Furniture Drive



4



Public Hearing Comments and Board Discussion