

# REQUEST FOR BOARD ACTION

## HENDERSON COUNTY BOARD OF COMMISSIONERS

**MEETING DATE:** December 5, 2022

**SUBJECT:** Public Hearing for Proposed Right of Way Closure (Portion of Rogers Avenue)

**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) Plat of Proposed ROW Closure  
(5) Order of Closure  
(6) PowerPoint

### SUMMARY OF REQUEST:

Planning and Property Addressing staff have received the attached petition to close a portion of Rogers Avenue 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 November 7, 2022, meeting.

The current petition to close a portion of Rogers Avenue right-of-way was brought to the Board on October 5, 2015. The Board denied the closure because an adjacent property owner that had access off Rogers Avenue was not in support of the request. The adjacent property has been sold, and the applicant now owns all property with access from Rogers Avenue and has submitted a new request.

### PUBLIC NOTICE:

The public hearing notice was advertised in the Hendersonville Lightning on November 16<sup>th</sup>, 2022, November 23<sup>rd</sup>, 2022, and November 30<sup>th</sup>, 2022, and the property was posted on November 15<sup>th</sup>, 2022. Notices of the hearing were mailed on November 10<sup>th</sup>, 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 Rogers Avenue and sign the Order of Closure.*

# Proposed Road Right of Way Closure of Rogers Avenue

957770200 JACKSON,  
SIX, LLC; PS2 SEVEN,  
LLC; PS2 EIGHT, LLC

9577873044  
GLENN, EUGENE  
W.; GLENN, SHERAN C

9577875005  
CONNER,  
JONATHAN RAY

9577768976  
JACKSON,  
NEAL E

9577861920  
JACKSON,  
NEAL ERWIN

9577865858 GLENN,  
EUGENE W.; GLENN,  
SHERAN C.

9577769805  
JACKSON,  
NEAL E

9577862847  
JACKSON,  
NEAL ERWIN

9577769705  
JACKSON,  
NEAL E

9577768625 RESENDIZ-RESENDIZ,  
DIANA; RESENDIZ-TREJO, GERARDO


9577862792  
JACKSON,  
NEAL E.


9577860673 RESENDIZ,  
GERARDO; RESENDIZ,  
LEONOR; RESENDIZ,  
VIOLETA; RESENDIZ, DIANA


9577866601 BLUE  
RIDGE HOLDINGS  
PARTNERS LLC


9577768579 GOLDKUHL,  
REGINA; GOLDKUHL,  
ROBERT D.


9577860544  
MEJIA, MARIA  
DEL ROSARIO

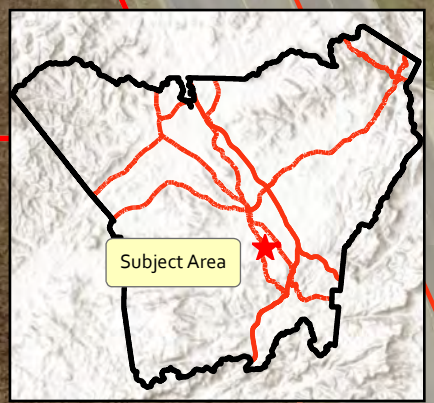
**Request of Closure**  
 Request of Closure

**Subject Parcels**  
 Subject Parcels

**Parcels**  
 Parcels

**Major Roads**  
 Major Roads

**Streets**  
 Streets



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: Neal Jackson



**§ 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.)



14373

GRID NORTH  
N.A.D. 83/2011



**TIE LINE CALL TABLE**

Course	Bearing	Distance
T1	S 78°35'43" W	14.80'
T2	S 11°00'26" E	38.92'
T3	S 77°19'20" W	15.12'
T4	S 76°02'09" W	14.99'
T5	S 73°50'59" W	14.91'
T6	N 24°37'36" W	80.68'

- NOTES:**
- 1- AREAS BY COORDINATE COMPUTATION.
  - 2- ALL AREAS SHOWN ARE SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD OR UNRECORDED THAT MAY DIRECTLY AFFECT ALL AREAS SHOWN.
  - 3- THIS PROPERTY IS WITHIN AN AREA ZONED CC BY HENDERSON COUNTY.
  - 4- PORTION OF ROGERS AVENUE CLOSED PER DEED BOOK 1504, PAGE 631.
  - 5- NO ORDER TO PERMANENTLY CLOSE PORTIONS OF PRIVATE 30' RIGHT OF WAY FOR ROGERS AVENUE SHOWN ON SLIDE 9608 FOUND.
  - 6- LINES FROM POINT "A" TO POINT "B" ARE WITH THE WESTERN MARGIN OF RIGHT OF WAY FOR U.S. HIGHWAY 176, A.K.A. SPARTANBURG HIGHWAY.
  - 7- THE CURRENT OWNERS OR RECORD ARE JAMES C. KIRKPATRICK, KENNETH JACOBINE AND WIFE LISA KIRKPATRICK.
  - 8- REVISED AND REDRAWN AUGUST 22nd, 2022 TO ADD CALLS ALONG UNOPENED PORTION OF ROGERS AVENUE.
  - 9- THIS MAP SUPERSEDES SLIDE 14371.

- LEGEND**
- ⊕ MONUMENT FOUND AS NOTED
  - MONUMENT SET AS NOTED
  - POINT NOT STAKED
  - P-PED - PHONE PEDESTAL
  - UP - UTILITY POLE
  - PHP - PHONE POLE
  - TRANS - TRANSFORMER
  - TV-PED - CABLE TV PEDESTAL
  - WM - WATER METER
  - WV - WATER VALVE

BOOK 2022 PAGE 14373 (1)



This document presented and filed:  
08/22/2022 09:29:41 AM  
**SRS**  
WILLIAM LEE KING, HENDERSON COUNTY, NC

PLAT OF SURVEY  
FOR  
**JAMES C. KIRKPATRICK  
AND  
KENNETH JACOBINE  
AND WIFE  
LISA KIRKPATRICK**

BEING A RECOMBINATION OF THE PROPERTIES  
DESCRIBED IN  
DEED BOOK 1593, PAGE 508  
DEED BOOK 1604, PAGE 271  
  
HENDERSONVILLE TOWNSHIP  
HENDERSON COUNTY  
NORTH CAROLINA

SCALE: 1" = 50'  
AUGUST 22nd, 2022

State of North Carolina  
County of Henderson  
I, PAM CARYER, Review Officer  
of Henderson County, certify that the map  
or plat to which this certification is affixed  
meets all statutory requirements for recording.  
August 8-22-22  
Review Officer

State of North Carolina, County of Henderson  
This instrument was prepared for registration and recorded  
in the Office of Register of Deeds in the State and County  
designated; at Plat Slide 14373, this 22nd day of  
August, 2022  
At 9:29 O'clock AM

William Lee King  
BY: Sylvia Schmidt

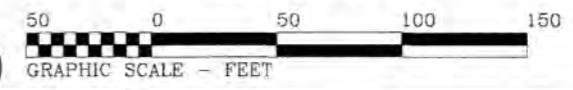
I, DAVID H. HILL, N.C. PROFESSIONAL LAND SURVEYOR, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION AND THAT LOCAL HORIZONTAL AND VERTICAL GRID CONTROL WAS ESTABLISHED FROM AN ACTUAL GPS SURVEY MADE UNDER MY SUPERVISION, AND THAT THE FOLLOWING INFORMATION WAS USED TO PERFORM THE SURVEY:

- (1) CLASS OF SURVEY: CLASS A
- (2) POSITIONAL ACCURACY: 0.004 HORIZONTAL AT 95%
- (3) TYPES OF GPS FIELD PROCEDURE(S): VRS
- (4) DATES OF SURVEY: SEPTEMBER, 2017
- (5) DATUM/EPOCH: NAD 83/2011/88
- (6) PUBLISHED/FIXED CONTROL USE:
- (7) GEOID MODEL: GEOID 12B
- (8) COMBINED GRID FACTOR(S): 0.999773183
- (9) UNITS: US SURVEY FOOT

WITNESS MY SIGNATURE, LICENSE NUMBER, AND SEAL  
THIS 22nd DAY OF AUGUST, A.D., 2022.  
David H. Hill L-3863  
N.C. PROFESSIONAL LAND SURVEYOR LICENSE #

I, DAVID H. HILL, a Professional Land Surveyor, certify that this survey is a recombination of property.  
David H Hill

I, DAVID H. HILL, certify that this plat was drawn from an actual survey made under my supervision (used description recorded in Book SEE, page REFERENCES; that the boundaries not surveyed are clearly indicated as drawn from information found in Book AS, page SHOWN; that the ratio of precision as calculated is 1: 10000; that this plat was prepared in accordance with G.S. 47-30 as amended. Witness my original signature, registration number and seal this 22nd day of AUGUST, A.D., 2022.  
David H Hill  
David H. Hill, NCPLS L-3863



0.921 ACRES (TOTAL)



DEED REFERENCES:  
D.B. 1593, PG. 508  
D.B. 1604, PG. 271  
SLIDE 7357  
SLIDE 7908  
SLIDE 8284  
SLIDE 14371

TAX REFERENCES:  
9577-86-2769  
9577-86-3640

PARTY CHIEF: DHH

REVISIONS:  
08/22/2022



SURVEY BY  
**HILL AND ASSOCIATES  
SURVEYORS, P.A.**  
LICENSE NUMBER: C-1991  
DAVID H. HILL  
N.C.P.L.S. 3863  
403 WEST BLUE RIDGE ROAD  
EAST FLAT ROCK, NORTH CAROLINA 28726  
(828) 693-1409

CHECKED BY: DHH DRAWING: 2022260601  
DATE: AUGUST 22nd, 2022 DRAWN BY: DHH FILE: 20222606

**Henderson County  
North Carolina**

Before the Board of Commissioners

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**ORDER CLOSING A PORTION OF  
RIGHT-OF-WAY FOR ROGERS AVENUE**

THIS MATTER came before the Henderson County Board of Commissioners at its regular December 5, 2022, meeting, pursuant to N.C. Gen. Stat. §153A-241, on the issue of closing a portion of right-of-way for Rogers Avenue 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 at the Board's regular meeting on November 7, 2022, on the petition by Neal Jackson to close the remaining portion of Rogers Avenue located in Henderson County.
2. At the Board's November 7, 2022, the Board adopted a resolution "declaring its intent to close" the said portion of Rogers Avenue.
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 December 5, 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 December 5, 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 the remaining portion of Rogers Avenue 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 5<sup>th</sup> day of December 2022.

BOARD OF COMMISSIONERS  
OF HENDERSON COUNTY

By: \_\_\_\_\_  
William G. Lapsley, Chairman

Attest:

\_\_\_\_\_  
Denisa Lauffer, Clerk to the Board



# ROW Closure: Portion of Rogers Avenue

Henderson County Board of Commissioners

Public Hearing

December 5<sup>th</sup>, 2022

1

## Application Summary

- Request submitted to close a portion of ROW on Rogers Avenue in Henderson County
- Petitioner are Neal Jackson, on behalf of Neal Jackson
- On November 7<sup>th</sup>, 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 November 16<sup>th</sup>, November 23<sup>rd</sup>, and November 30<sup>th</sup>
  - Notice to adjacent property owners was mailed on November 10<sup>th</sup>
  - Notice posted on property on November 15<sup>th</sup>

2





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## Application History

- July 6, 2009 ~ Board closed portion of Rogers Avenue
- October 5, 2015~ Board denies closure of remaining portion of Rogers Avenue
  - Adjacent property owner with access to Rogers Avenue was not in support of the closure in 2015
  - The adjacent property has been sold and the current applicant and owner has resubmitted the request to close the remaining portion of Rogers Avenue
  - All adjacent property owners are in favor of the current request

4

Photos of the Portion of Furniture Drive



5



## Public Hearing Comments and Board Discussion

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