

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

- MEETING DATE:** February 5th, 2024
- SUBJECT:** Public Hearing for Proposed Right of Way Closure (Portion of 4th Ave)
- 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 Closures
(4) Order of Closure
(5) PowerPoint

SUMMARY OF REQUEST:

Planning and Property Addressing staff have received the attached petition to close a portion of 4th Ave, a 60-foot unopened 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 January 02, 2024, meeting.

PUBLIC NOTICE:

The public hearing notice was advertised in the Hendersonville Lightning on January 17, 2024, January 24, 2024, and January 31, 2024. Notices of the hearing were mailed on January 3rd, 2024, 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 4th Ave and sign the Order of Closure.

§ 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: Leandro Roselli Email: LEOAVL2002@GMAIL.COM
Address: 82 Mountain Home street, Hendersonville NC 28791
Telephone: 828-242-3068

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

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>Leandro F. Roselli</u>	<u>82Mountain Home St. Hendersonville</u>	<u><i>Leandro Roselli</i></u>
<u>Taylor A. Roselli</u>	<u>82Mountain Home St.Hendersonville</u>	<u><i>Taylor Roselli</i></u>
<u>Charles W. Clark</u>	<u>830 State Street Hendersonville</u>	<u><i>Charles W. Clark</i></u>
<u>Regine J. Clark</u>	<u>830 State Street Hendersonville</u>	<u><i>Regine J Clark</i></u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**Henderson County
North Carolina**

Before the Board of Commissioners

**ORDER CLOSING A PORTION OF
RIGHT-OF-WAY FOR 4TH AVENUE**

THIS MATTER came on for hearing before the Henderson County Board of Commissioners at its regular February 05, 2024, meeting, pursuant to N.C. Gen. Stat. §153A-241, on the issue of closing a portion of right-of-way for 4th 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 January 02, 2024, on the petition by close a portion of 4th Ave located in Henderson County.
2. At the Board's January 02, 2024, the Board adopted a resolution "declaring its intent to close" the said portion of 4th Avenue.
3. A map showing the area under consideration is shown on the attachment hereto, Exhibit A, (indicated by a broken red line).
4. A notice of this Board's February 05, 2024, 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 4th 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 05^h day of February 2024.

BOARD OF COMMISSIONERS
OF HENDERSON COUNTY

By: _____
Rebecca K. McCall, Chairman

Attest:



ROW Closure: Portion of 4th Avenue

Henderson County Board of Commissioners

Public Hearing

February 05th, 2024

Application Summary

- Request submitted to close a portion of ROW on 4th Avenue in Henderson County
- Petitioner is Leandro Roselli
- On January 2nd, 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 January 17, 2024, January 24, 2024, and January 31, 2024.
 - Notice to adjacent property owners was mailed on January 3rd
 - Notice posted on property on January 5th

Aerial Map



Photos of the Portion of 4th Avenue





Public Hearing Comments and Board Discussion