

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: Monday, July 7, 2008

SUBJECT: Public Hearing for Rezoning Application #R-2008-06

ATTACHMENTS:

1. Staff Report
2. Aerial Photo Map
3. Subject Area Photos
4. Residential Two Manufactured Housing (R2 MH) District Text
5. Excerpt of Planning Board Minutes from May 15, 2008
6. Notice of Public Hearing
7. Certification of Notification of Public Hearing
8. Power Point Slides

SUMMARY OF REQUEST:

Rezoning Application #R-2008-06, which was submitted on March 25, 2008, by Donald Lee Burnett, applicant, requests that the County rezone approximately 2.36 acres of land, located off Walnut Cove Road (SR 1125), from a R-40 (Estate Residential) zoning district to a R2-MH (Residential Two Manufactured Housing) zoning district. The property owners are: Donald Lee Burnett (PINs 9556-54-0765) and Jennifer Heidi Long (PIN portion of 9556-44-8645). Planning Department staff is recommending a portion of Jennifer Heidi Long's property (PIN portion of 9556-44-8645) be included in rezoning application #R-2008-06.

The Henderson County Planning Board considered rezoning application #R-2008-06 at its regularly scheduled meeting on May 15, 2008. During that meeting, the Board voted 5 to 0 to send the Board of Commissioners a unfavorable recommendation for rezoning application #R-2008-06 to rezone the Subject Area to a R2MH (Residential Two Manufactured Housing) zoning district.

PUBLIC NOTICE:

Before taking action on the application, the Board of Commissioners must hold a public hearing. In accordance with §§200A-314(C) and 200A-337(B) of the Henderson County Land Development Code and State Law, notices of the July 7, 2008, public hearing regarding rezoning application #R-2008-06 were published in the Hendersonville Times-News on June 18, 2008 and June 25, 2008. The Planning Department sent notices of the hearing via first class mail to the owners of properties adjacent to the Subject Area and the Applicants and posted signs advertising the hearing on the Subject Area on June 18, 2008. Attachment 7 includes a certification to this effect.

BOARD ACTION REQUESTED:

Planning Staff recommends that the Board of Commissioners approve the application to rezone the Subject Area from an R-40 (Estate Residential) zoning district to a R2-MH (Residential Two Manufactured Housing) zoning district.

Suggested Motion:

I move that the Board recommend approval of rezoning application #R-2008-06 to rezone the Subject Area from an R-40 (Estate Residential) zoning district to a R2-MH (Residential Two Manufactured Housing) zoning district based on the recommendations of the Henderson County 2020 Comprehensive Plan.

Henderson County Planning Department Staff Report

Rezoning Application #R-2008-06 (R-40 to R2MH)

Donald Lee Burnett, Owner/Applicant
Jennifer Heidi Long, Owner

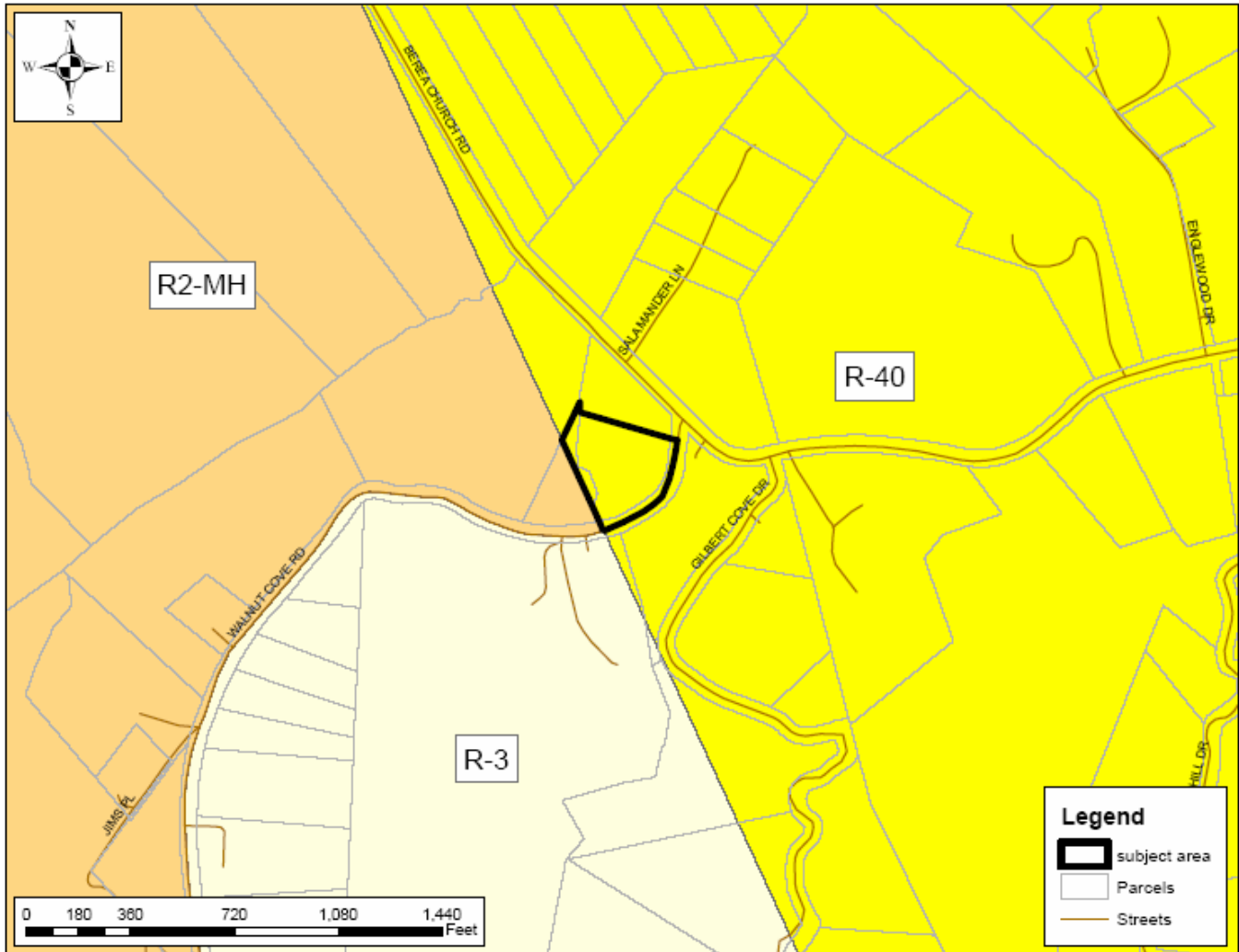
1. Rezoning Request

- 1.1. **Date of Application:** March 25, 2008
- 1.2. **Property Owners:** Donald Lee Burnett, and Jennifer Heidi Long
- 1.3. **Applicant:** Donald Lee Burnett
- 1.4. **Request:** Rezone Subject Area from an R-40 (Estate Residential) zoning district to a R2MH (Residential Two Manufactured Housing) zoning district.
- 1.5. **Subject Area:**
 - 1.5.1. **Size:** Approximately 2.36 acres of land comprised of all or a portion of two (2) parcels
 - 1.5.2. **PINs:** 9556-54-0765; portion of 9556-44-8645
 - 1.5.3. **Location:** The Subject Area is:
 - 1.5.3.1. Approximately 95 feet west of the intersection of Berea Church Road (SR 1126) and Walnut Cove Road (SR 1125); and
 - 1.5.3.2. Approximately 2,500 feet south of the intersection of Crab Creek Road (SR 1127) and Berea Church Road(SR 1126).

2. Current Zoning

- 2.1. **Application of Current Zoning:** The Subject Area is currently zoned R-40 (Estate Residential) which was originally applied with the adoption of Chapter 200, Zoning Ordinance in July 1981. (See Map A).

Map A: Current Zoning



2.2. **Adjacent Zoning:** To the north and east R-40 (Estate Residential), to the west R2MH (Residential Two Manufactured Housing), and to the southwest R3 (Residential Three) (See Map B). The surrounding areas to the west were previously (prior to LDC adoption on September 19, 2007) zoned OU (Open Use).

2.3. **District Comparison:**

R40 Estate Residential District: “This district is established as a district in which the principal use of the land is for low-density residential use. This district is intended to ensure that residential development not having access to public water supplies and dependent upon septic tanks for sewage disposal will occur at a sufficiently low density to provide a healthful environment. This district is also intended to be a quiet, low-density neighborhood consisting of single-family residences.” (Chapter 200A, Land Development Code §200A-27).

R-40 (Estate Residential) (1) requires 35 foot side and rear setbacks; (2) does not limit maximum height, and (3) provides a minimum lot size of 40,000 square feet.

R2MH (Residential Two with Manufactured Housing): “The purpose of Residential District Two Manufactured Housing (R2MH) is to foster orderly growth where the principal use of land is residential. The intent of this district is to allow for low to medium density residential development, with the inclusion of manufactured housing, consistent with the recommendations of the Comprehensive Plan. This general use district is typically meant to be utilized in areas designated as transitional in the Comprehensive Plan” (Chapter 200A, Land Development Code §200A-29).

R2MH (Residential Two with Manufactured Housing) (1) requires 10 foot side and rear setbacks, (2) to a maximum building height of 40 feet, and (3) provides for a standard density of one (1) unit per acre with a maximum density of 2 units per acre.

3. Current Uses of Subject Area and Adjacent Properties

3.1. **Subject Area Uses:** The Subject Area contains a storage facility.

3.2. **Adjacent Area Uses:** Surrounding area lands contain primarily residential and agricultural uses.

3.2.1. **To the North:** One (1) single family residential use is located on the corner of Walnut Cove Road (SR 1125) and Berea Church Road (SR 1126). The property to the north contains an agricultural use.

3.2.2. **To the Southeast:** A number of mobile homes which appear to be vacant are located to the southeast.

3.2.3. **To the South and West:** A number of single-family residential uses are located to the southwest along Walnut Cove Road (SR 1125).

4. Transportation and Access

4.1. **Frontage:** The Subject Area has approximately 425 feet of road frontage along Walnut Cove Road (SR 1125)

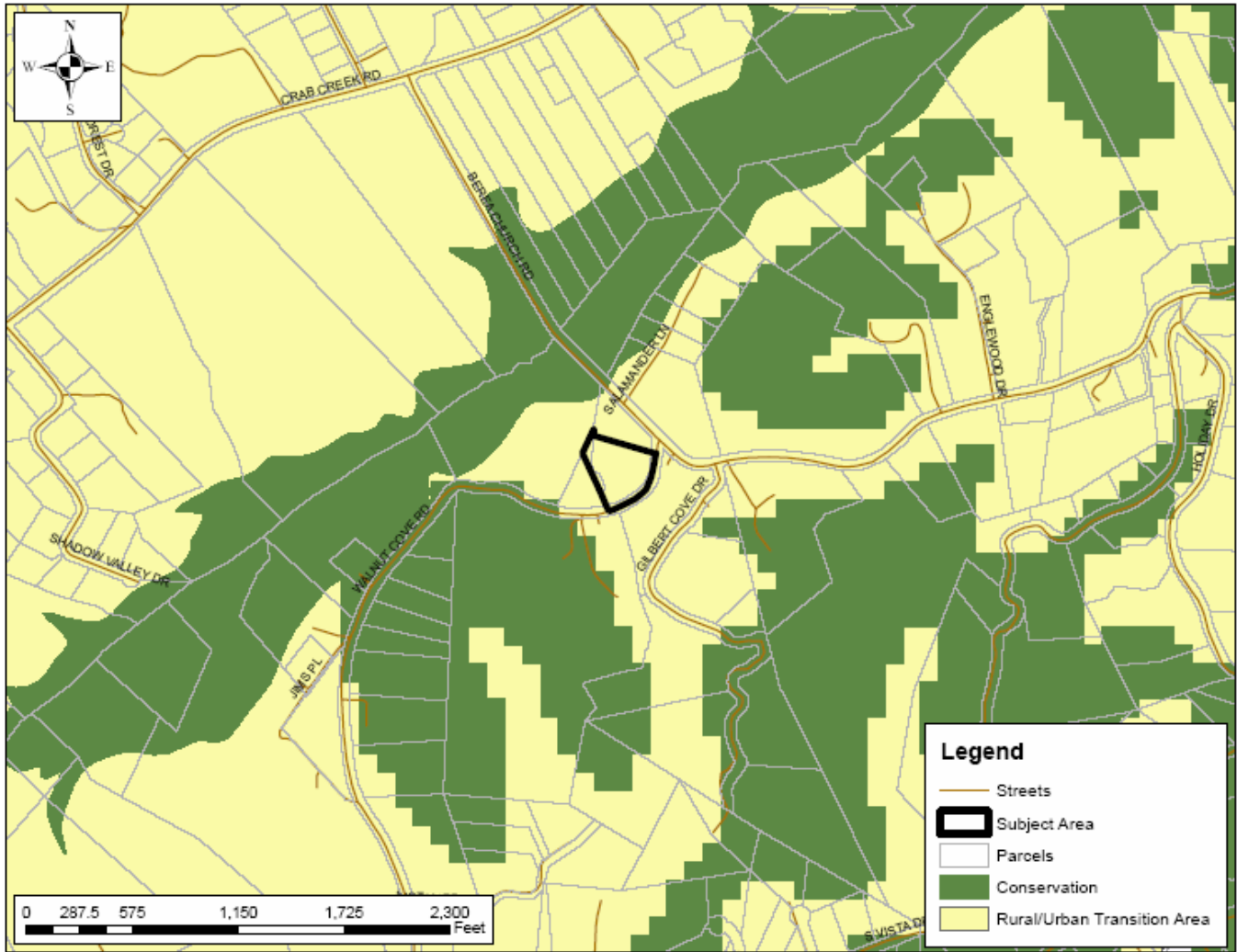
4.2. **Transportation:** No traffic counts were available for any portion of Walnut Cove Road (SR 1125) or Berea Church Road (SR 1126)

4.3. **The NCDOT 2009-2015 State Transportation Improvement Program (STIP):** No new improvements within close proximity to the Subject Area are proposed.

5. The Henderson County 2020 Comprehensive Plan (CCP)

5.1. **Rural/Urban Transition Area:** The CCP Future Land Use Map identifies the Subject Area as being located in the Rural/Urban Transition Area (2020 CCP, Pgs. 128, 129 & Appendix 1, Map 24) (See Map D).

Map B: 2020 County Comprehensive Plan Future Land Use Map



5.1.1. The CCP states that, “The RTA is currently rural in character, with existing pockets of limited higher density residential and commercial development. The text of the 2020 CCP suggests that the Subject Area would be suitable for clustering and conservation design encouraged with the intent of maintaining a rural environment, protecting sensitive natural areas, and reserving land for future development. (2020 CCP, Pg. 130)

6. Staff Comments

Staff’s position at this time, under the guidelines of current plans, policies and studies, is it supports the rezoning of the property from an R-40 (Estate Residential) zoning district to a R2MH (Residential Two Manufactured Housing) zoning district. This based on the following:

6.1. **The 2020 CCP:** The CCP Future Land Use Map (See Map D) places the subject area in the “Rural/Urban Transition Area” classification. The text of the 2020 CCP suggest, that taking the project density approach gives the developer the flexibility to adjust setbacks and lot sizes to fit various needs, from adjusting for topography to creating affordable lots.

- 6.2. **Adjacent Zoning:** The Subject Area directly abuts an existing R2MH zoning district to the west. If the Subject Area were to be rezoned to R2MH this property would be apart of a contiguous R2MH zoning district.
- 6.3. **Comparison of Districts:** Applying R2MH (Residential Two with Manufactured Housing) will allow for an increase in the number of permitted residential uses. Applying R2MH will also allow for density based development without a minimum lot size.

7. Staff Recommendations

- 7.1. When reviewing rezoning requests Staff attempts to identify plans or policies, changes in existing conditions, undue hardship to the Applicant, or overriding community interest to justify supporting the proposed rezoning. Staff's position at this time, under the guidelines of current plans, policies and studies, is it supports the rezoning of the Subject Area to R2MH (Residential Two Manufactured Housing) consistent with the recommendations of the Henderson County 2020 Comprehensive Plan.
 - 7.1.1. It is generally incumbent upon the Applicant to demonstrate an overriding justification for approving a given rezoning application. Staff encourages the Applicant to present any information that would inform the County's consideration of the proposed rezoning. Staff requests the Applicant not discuss any specific use being considered for the property. The Technical Review Committee, Planning Board, and the Board of Commissioners cannot consider any specific proposed use for the property and must only consider the range of possible uses when reviewing and making recommendations on the rezoning request.

8. Technical Review Committee Recommendations

- 8.1. The Henderson County Technical Review Committee considered rezoning application #R-2008-06 at its regularly scheduled meeting on May 6, 2008. During that meeting, the Technical Review Committee voted unanimously to send forward a favorable recommendation on rezoning application #R-2008-06 to rezone the Subject Area from an R-40 (Estate Residential) to an R2MH (Residential Two Manufactured Housing) zoning district.

9. Planning Board Recommendations

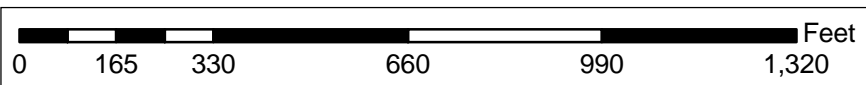
- 9.1 The Henderson County Planning Board considered rezoning application #R-2008-06 at its regularly scheduled meeting on May 15, 2008. During that meeting, the Planning Board voted unanimously (5-0) to send forward a unfavorable recommendation on rezoning application #R-2008-07 to rezone the Subject Area from an R-40 (Estate Residential) to an R2MH (Residential Two Manufactured Housing) zoning district.



Legend

-  Subject Area
-  Streets
-  Parcels

Rezoning Application
R-2008-06 Donald Lee Burnett, applicant





View of Subject Area looking northwest from Walnut Cove Rd.



View of the Subject Areas neighbor to the east looking north from Walnut Cove Rd.



View of Subject Area looking north from Walnut Cove Rd.



View of Subject area looking south from Berea Church Rd.

§200A-1. Residential District Two Manufactured Housing (R2MH)

A. Purpose. The purpose of Residential District Two Manufactured Housing (R2MH) is to foster orderly growth where the *principal use* of land is residential. The intent of this district is to allow for low to medium density *residential development*, with the inclusion of manufactured housing, consistent with the recommendations of the *Comprehensive Plan*. This general *use district* is typically meant to be utilized in areas designated as Transitional in the *Comprehensive Plan*.

B. Density and Dimensional Requirements. Each *use* allowed in this district shall, at a minimum, conform to the following requirements (in the case of a nonresidential *use* the *residential density* requirements shall not apply). In some cases a specific *use* may be required to meet the Supplemental Requirements as set forth in §200A-63 (Supplemental Requirements).

| Table 2.3. R2MH Density and Dimensional Requirements | | | |
|---|----------------------------|---------------------|----|
| (1) <i>Residential Density</i> (units/acre) | | (2) Standard | 1 |
| | | (3) Maximum | 2 |
| (4) <i>Yard Setbacks</i> (feet) | <i>Front</i> or <i>ROW</i> | <i>Local</i> | 15 |
| | | <i>Collector</i> | 20 |
| | | <i>Thoroughfare</i> | 35 |
| | | <i>Boulevard</i> | 50 |
| | | <i>Expressway</i> | 60 |
| | | <i>Freeway</i> | 90 |
| | | <i>Side</i> | 10 |
| | <i>Rear</i> | 10 | |
| (5) Maximum Height (feet) | | | 40 |

(1) *Residential density* shall be calculated utilizing the entire acreage of a *tract* of land. Under this scenario, *residential density* shall be determined based on the following formula:

$$\text{Lot size} \times \text{allowable units per acre} = \text{permitted dwelling units}$$

The following example assumes a 5 acre tract with an allowable density of 1 unit/acre:

$$5 \text{ acres} \times 1 \text{ unit per acre} = \underline{\mathbf{5 \text{ permitted dwelling units}}}$$

The maximum *residential density* for portions of the *tract* with a *slope* of 60 percent or greater (where such *slope* areas of the *tract* account for ten (10) percent or more of the *tract*) shall be one-half (½) the eligible density.

- (2) Standard *residential density* shall be applied:
 - a. On a *lot* existing at the time of the initial adoption of this Chapter, where there is not adequate area to comply with the applicable standard *residential density* requirement;
 - b. To single-family residential *uses*; and
 - c. To multifamily residential uses with fewer than five (5) units.
- (3) Maximum residential density shall be available to multifamily dwellings (including duplexes, triplexes, quadraplexes and multifamily dwellings with five (5) or more units). provided such dwellings are generally served by public or private utility systems which meet the requirements of the Henderson County Department of Environmental Health or other governmental authorities having jurisdiction thereof.
- (4) Residential accessory structures shall be located in side or rear yards and shall be setback a minimum of ten (10) feet from any property line.
- (5) Maximum height may be exceeded in multifamily developments as detailed in §200A-63 (Supplemental Requirements) SR 1.6. (Dwelling, Multifamily, Five (5) or More Units), provided such developments do not exceed 50 feet in height.

**EXCERPT FROM THE HENDERSON COUNTY PLANNING BOARD MINUTES
May 15, 2008**

Rezoning Application #R-2008-06 – Rezone Approximately 2.36 Acres of Land – Located off Walnut Cove Road – Estate Residential (R-40) to Residential Two Manufactured Housing (R2MH) Zoning District – Donald Lee Burnett, Applicant on behalf of property owners Donald Lee Burnett and Jennifer Heidi Long. Presentation by Planning Department. Presentation by Parker Sloan, Planner. Mr. Sloan stated that on March 25, 2008, Donald Lee Burnett submitted an application to rezone approximately 2.36 acres of land, located off Walnut Cove Road from a R-40 (Estate Residential) zoning district to a R2MH (Residential Two Manufactured Housing) zoning district.

The property owners are Donald Lee Burnett and Jennifer Heidi Long. Ms. Long's portion was added by staff. The subject area appears to contain some sort of storage facility. He said that one (1) single family residential use is located on the corner of Walnut Cove Road and Berea Church Road. The property to the north contains an agricultural use and a number of mobile homes which appear to be vacant are located to the southeast. A number of single-family residential uses are located to the southwest along Walnut Cove Road. Mr. Sloan stated the CCP Future Land Use Map identifies the subject area as being located in the Rural/Urban Transition Area, applying R2MH (Residential Two with Manufactured Housing) will allow for an increase in the number of permitted residential uses and applying R2MH will also allow for density based development without a minimum lot size. He stated that the property adjoins adjacent R2MH zoning and that Staff supports the rezoning of the subject area to R2MH consistent with the recommendations of the CCP.

Mr. Donald Lee Burnett, one of the property owners, was present. He said that when he purchased the land there was a mobile home on it, but that he had sold the mobile home and did not realize that there was a time frame of 180 days in order to put another mobile home back on the property. He said he plans on putting a manufactured home on the same spot where the other existed and that is the reason for the rezoning request. He said that he would follow the existing rules and regulations of manufactured homes laid out in the Land Development Code. He said he feels that it fits in the area because he borders existing R2MH. He mentioned that there is an existing storage facility on the property and that he stores his business products in it.

Dale Reese said that a year ago he had wanted to put a mobile home on his property, but was told he could only place a modular on the property, even though there are other mobile homes all around his property.

Robin Reese stated that she was opposed of rezoning the property. She was concerned about the commercial use of the storage building on Mr. Burnett's property. She stated that this building is within thirty feet of their property and she said she is not fond of having any type of commercial business literally at their back door because it would affect her family.

Carolyn Franklin said that she lives across from the subject property and mentioned that they do have a mobile home moving business since 1978. She stated that if you allow mobile home on the subject property, then mobile homes should be allowed in the whole vicinity and the whole area should be rezoned.

Mr. Burnett mentioned that he didn't feel that it would be a problem to include the Franklin property, as well as the Chandler property. He added that he is not asking to be zoned commercial and knows that if he gets rezoned to R2MH he would have to go through the process of obtaining a special use permit for his storage facility for business. He said that if he can not no longer store his personal property dealing with a business in the storage facility, then he would move it elsewhere.

Ms. Reese added that the only building presently on this property is a metal building that he uses to store his company's merchandise. She said that there are people continually going in and out of the building all hours of the day and that it affects her family. She says that she wants the Board to know that it is an ongoing business which is being operated every day and sometimes two or three times a day.

Jennifer Heidi Long said she is not affected by the commercial aspect as the Reese's are and is against commercial of any kind for the area. She mentioned that she is for the rezoning to R2MH. Ms. Zambon stated that there are some commercial and retail business that may be allowed in R2MH, but the only one that is allowed by right is a produce stand, all the other commercial uses would require a special use permit, which would have to go before the Board of Adjustment, which would entail a quasi-judicial procedure to determine whether or not it is an appropriate use for that area. The Board should be only focused on the rezoning request to R2MH and whether or not it is appropriate for this area and to make a recommendation to the Board of Commissioners and to not consider what is going on with that property at present. Also, the only commercial use allowed in an R-40 district is a bed and breakfast with a special use permit as well as some incidental home occupations. There are some institutional business allowed in R-40 such as churches and other civic buildings.

After some further Board discussion, Chairman Pearce made a motion that the Board recommend denial of rezoning application #R-2008-06 to rezone the subject area from R-40 (Estate Residential) zoning district to a R2MH (Residential Two Manufactured home) zoning district because the additional changes that R2MH leave open do have an affect on adjacent property owners who have been held to the standards of the R-40 zoning. For consistency reasons it should remain as R-40 because of past property owners who have lived by the rules of the district and because of the zoning lines that have been established for a long time in the area. Renee Kumor seconded the motion and further stated that she feels the rezoning request would not be in keeping with the integrity of the neighborhood. All members voted in favor of the motion.

Mr. Starr informed the public that is present, this rezoning will be scheduled for a public hearing by the Board of Commissioners and that adjacent property owners will receive a mailed notice of when that public hearing will be.

**NOTICE OF PUBLIC HEARING
ON PROPOSED ZONING MAP & TEXT AMENDMENTS
(Rezoning Requests #R-2008-06, R-2008-07, R-2008-08, & Text Amendment Request TX-2008-02)**

The Henderson County Board of Commissioners will hold a public hearing on three requests for proposed map amendments to the Official Zoning Map of Henderson County and a request for proposed text amendments to Chapter 200A, Land Development Code.

Rezoning request #R-2008-06 would rezone approximately 2.36 acres of land, located off Walnut Cove Road (SR 1125), from an R-40 (Estate Residential) zoning district to an R2MH (Residential Two Manufactured Housing) zoning district. The Subject Area is composed of two parcels. The property owners are Donald Lee Burnett (PIN 9556-54-0765) and Jennifer Heidi Long (PIN portion of 9556-44-8645). The applicant is Donald Lee Burnett.

Rezoning Application #R-2008-07, initiated by Henderson County Planning Staff subsequent to a petition submitted by a number of property owners, requests that the County rezone approximately 29 acres of land, located off US Highway 25 North, from an RC (Regional Commercial) zoning district to an LC (Local Commercial) zoning district. The Subject Area is composed of 61 parcels with multiple property owners.

Rezoning #R-2008-08 and Text Amendment #TX-2008-02, which were initiated by Henderson County Planning Staff, would adopt new Flood Insurance Rate Maps (FIRMs) for Henderson County and make the necessary associated amendments to the flood damage prevention regulations of Chapter 200A, Land Development Code. The new FIRMs have, in some cases, modified the location of the floodway, 100-year floodplain, and 500-year floodplain boundaries in Henderson County. The proposed amendments to the text of the LDC would reflect: (1) regulation changes associated with the new FIRMs, (2) changes made to the State Model Flood Damage Prevention Ordinance since the original adoption of the regulations in 2005, and (3) organization of regulations within the LDC.

The public hearings for the requests will be held on Monday, July 7, 2008, at 7:00 P.M., in the Board of Commissioners Meeting Room located in the Henderson County Historic Courthouse, at 1 Historic Courthouse Square, in Hendersonville, NC. The public is invited to attend and comment on the proposed amendments.

Written comments addressed to the Henderson County Board of Commissioners, 1 Historic Courthouse Square, Suite 1, Hendersonville, NC 28792, will be accepted prior to the hearings. Information about the proposed amendments is available for review in the Henderson County Planning Department, 213 1st Avenue East, Hendersonville, NC, between the hours of 8:00 A.M. and 4:30 P.M., Monday through Friday, or on the Henderson County Website at www.hcplanning.org. For more information, call the Planning Department at (828) 697-4819 [TDD for the hearing impaired (828) 697-4580].

Please note that after considering public hearing comments, the Board of Commissioners may discuss other options or make changes to the proposed amendments before taking final action. The Henderson County 2020 Comprehensive Plan will be updated and amended, as necessary, to reflect the actions of the Board of Commissioners.

Elizabeth Corn
Clerk to the Board
Henderson County Board of Commissioners

For publication in the Times News on Wednesday, June 18, 2008 and Wednesday, June 25, 2008.

Certification of Notice of Public Hearing

In accordance with NCGS 153A-343 the Planning Department certifies notices of the July 7, 2008 hearing regarding Rezoning Application #R-2008-06 were:

1. Submitted to the Hendersonville Times-News on June 3, 2008 to be published on June 18, 2008 and May 25, 2008 by Matthew Cable;
2. Sent, via first class mail, to the owners of properties adjacent to the Subject Area on June 18, 2008 by Parker Sloan;
3. Sent, via first class mail, to the property owners on June 18, 2008 by Parker Sloan; and
4. Posted on the Subject Area on June 18, 2008 by Matthew Cable.

The signatures herein below indicate that such notices were made as indicated herein above:

1. Matthew Cable
2. Parker Sloan

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

Kathleen R. Scanlan, a Notary Public, in and for the above County and State, do hereby certify that Matthew Cable & Parker Sloan and

personally appeared before me this day and acknowledged the due execution by Matthew Cable & Parker Sloan of the foregoing instrument.

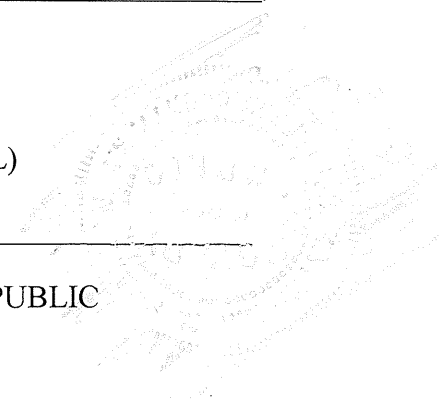
WITNESS my hand and notarial seal, this the 25 day of June, 2008.

My commission expires:

Kathleen R. Scanlan
10/24/2010

(SEAL)

NOTARY PUBLIC



Rezoning Application R-2008-06

