

**HENDERSON COUNTY
PLANNING BOARD MINUTES
November 21, 2006**

The Henderson County Planning Board met on November 21, 2006 for their regular called meeting at 5:30 p.m. in the Meeting Room of the Land Development Building at 101 East Allen Street, Hendersonville, NC. Board members present were Mike Cooper, Vice-Chair; Stacy Rhodes, Gary Griffin, Jonathan Parce, John Antrim, Mark Williams and Renee Kumor. Others present included Anthony Starr, Planning Director; Matt Card, Planner; Anthony Prinz, Planner; Sarah Zambon, Associate County Attorney and Kathleen Scanlan, Secretary. Board members Tommy Laughter and Chairman Tedd Pearce were absent.

Due to the absence of Chairman Pearce, Vice-Chairman Mike Cooper resided over the meeting and called the meeting to order. He asked for the approval of the October 17, 2006 minutes. John Antrim made a motion to approve the minutes and Gary Griffin seconded the motion. All members voted in favor.

Adjustments of the Agenda. There were no adjustments to the agenda made.

Staff Reports. Mr. Starr mentioned that at the Board of Commissioners meeting it was decided that all of the offices in the Land Development Building will be moving in early January to the Board of Commissioners building on 100 N. King Street. The Planning Department will be located on the third floor of the building. He mentioned that the last Planning Board meeting in this building will be held in December.

NEW BUSINESS:

Ordinance Concerning Protection of Gated Communities and Subdivisions – Presentation by Anthony Starr. Mr. Starr mentioned that a Gate Ordinance was adopted by the Board of Commissioners and developed by the Emergency Services Department. He stated that it would apply to new subdivisions. He said existing gated communities will have to provide siren-activated gates within six months and new gated communities will have to do the same. He said in addition, they will need to provide enough access for the emergency vehicles to turn around, should they not be able to get into the gate and provide enough stacking for three vehicles. He noted that there will be a cross-reference in the Land Development Code for this. Rocky Hyder will be notifying all the gated communities regarding this Ordinance.

Morning Glory Place – (File # 2006-M46) – Combined Master Plan and Development Plan – (5 Single-Family Lots) – Located off Lynn Estate Road – Stacy Rhodes, Agent for Christopher Lindsey, Owner and Developer. Presentation by: Matt Card. Stacy Rhodes was recused from any discussion or decision regarding this subdivision because of his position with this project. Mr. Card reviewed the combined Master and Development Plan for Morning Glory Place and stated that on May 3, 2006 the Planning Department approved a minor subdivision which divided off a 3.5 acre tract of land from 21 acres off Lynn Estate Road. Subsequent to the minor subdivision approval, Mr. Christopher Lindsey bought the 3.5 acre tract of land from Joseph Laughter with the intention to further subdivide the property. Mr. Card stated that according to the Henderson County Subdivision Ordinance, (HCSO) it states that except in cases of expansion of approved minor subdivisions allowed under Section 170-13, subsection A(1), the minor subdivision procedure may not be used a second time within three years on property that was the subject of a previously approved minor subdivision and further states that the expansion of a minor subdivision shall be designed and disclosed at the time of approval of the original application. It appears that the expansion of the original minor subdivision was never disclosed to Staff and therefore Staff can not approve Mr. Lindsey's subdivision as it does not

meet the requirements of Section 170-13 of the HCSO. Since the intent of Section 170-13, A(2) is to prevent someone from evading the requirements of a major subdivision by allowing multiple minor subdivisions, Staff feels that Mr. Lindsey's subdivision can go to the Planning Board for approval as a major subdivision. Mr. Lindsey is proposing a total of 5 lots. The proposed lots will be served off of Lynn Estate Road which is an existing private gravel road with a 45-foot right-of-way. The applicant has proposed individual well and septic systems and the property is located in the Open Use zoning district which does not regulate the residential use of land.

Staff has reviewed the submitted Combined Master Plan and Development Plan for conformance with the (HCSO) and offers the comments that follow:

1. Final Plat Requirements. The final plat(s) must meet the requirements of Appendix 7 of the Subdivision Ordinance.
2. Private Roads. Because private roads are proposed, the final plat(s) must contain a note stating: The private roads indicated on this final plat may not meet the requirements of the North Carolina Department of Transportation for acceptance into the state road system. (HCSO 170-21B and Appendix 7)
3. Farmland Preservation District. The Final Plat(s) should include a notation that the property is within ½ mile of land in a Farmland Preservation District. (HCSO 170-35 and Appendix 7)

Review Agency Comments

4. Comments from the Fire Marshal. The Henderson County Fire Marshal's Office submitted comments regarding no fire suppression water supply and that the road width should support two-way traffic for emergency vehicles.

Stacy Rhodes, agent for the owner, stated that originally Joseph Laughter wanted to donate this land to Mt. Moriah Church and members of the church were going to take care of it and make a subdivision plan, but decided to sell the whole tract to Mr. Lindsey. Mr. Lindsey wasn't sure whether to sell it as one tract or subdivide it and that is the reason why it fell through the cracks. Mr. Rhodes suggested to Staff that on the Minor Subdivision application or on the checklist to put a wording such as: *future development or expansion has been disclosed*. He said regarding the comments from the Fire Marshal, there are fire hydrants all along Sugarloaf Road near the new school and the development.

Jonathan Parce made a motion that the Planning Board find and conclude that the Combined Master Plan and Development Plan complies with the provisions of the Subdivision Ordinance except for those matters addressed in Staff Comments section of the memo that need to be addressed (Comments 1 – 4). Gary Griffin seconded the motion and all members voted in favor.

Tranquility Place – (File # 2006-M45) – Master Plan – (51 Single-Family Lots) – Located off Low Gap Road – Stacy Rhodes, Agent for Wayne and Ann Nix, Owners and Developers.

Presentation by: Anthony Prinz. (Stacy Rhodes was still recused for this subdivision review). Mr. Prinz stated that Mr. Wayne Nix, property owner, has submitted through Waggoner & Rhodes Land Surveyors, Inc., a Master Plan for a proposed major subdivision to be known as Tranquility Place. Tranquility Place is proposed to be developed on five parcels of land totaling approximately 114 acres in size. The subject property is located off of Low Gap Road and directly adjoins the Hungary River.

Tranquility Place is proposed to contain 51 single-family lots that will be developed in four phases. The developer plans for each of the home sites to be served by individual water and septic systems. Four private roads will serve the project with the two entrances off of Low Gap Road. The subject property is currently located within a County Open Use zoning district, but is not within a designated Water Supply Watershed area. Henderson County GIS identifies multiple perennial streams on the property.

Mr. Prinz stated that this is a Master Plan review and therefore is just a concept plan. The purpose of a Master Plan is to present the overall development concept for a project and provide general information about the proposed development to allow for an assessment of its impact on the orderly growth and development of the County, environmental quality, land values, natural features identified on the site analysis sketch and the County's roads and governmental services. Staff has reviewed the submitted Master Plan for Tranquility Place and has met all of the requirements for a Master Plan review.

1. **Revisions to the Master Plan.** Staff has reviewed the Master Plan and found it to be in compliance with the requirements of Appendix 4 (Master Plan Requirements) of the HCSO.

Mr. Prinz said that in August of 2001, a Master Plan was approved by the Planning Board for proposed Lots 19, 20, 21, 22, and 23 of Tranquility Place as Phase II of the Mountain Shadow major subdivision. Given that a Master Plan has already been approved for those lots, Mr. Prinz suggested that the Planning Board recommend that the developer submit a Phase II Development Plan for Mountain Shadow rather than including the subject lots as Phase IV of Tranquility Place. He recommends this as there is four lots that do not have any access to Tranquility Place as everything runs through the Mountain Shadow subdivision. He added that the Mountain Shadow Phase II Development Plan does not have to be reviewed by the Planning Board and can be administratively approved by Planning Staff.

2. **Henderson County 2020 Comprehensive Plan (CCP).** The Future Land Use map of the CCP shows the subject property is located within the Rural Agricultural Area (RAA) of the Growth Management Strategy. Historically, areas of the RAA have been developed at lower residential densities and based upon the location, topography, and lack of public infrastructure, the same is expected to continue throughout the life of the CCP (through 2020). The proposed average density of Tranquility Place is 1 unit per 2 acres, which is greater than the average recommended density of 1 unit per 5 acres of the CCP. However, the current Draft Land Development Code recommends a density of 1 unit per 1.5 acres for the area around the proposed subdivision. If the code is adopted as drafted, it would create the need for amendments to the CCP that would allow it to support the proposed development.

The Future Land Use Map also shows that portions of the development are proposed on land designated as "Conservation". Conservation areas are likely to be sensitive natural areas, such as steep slopes, streams, creeks, waterfalls and other features found on the property. At this time, the County does not have any specific regulations or incentives to ensure the preservation of such areas.

Mr. Prinz said that Staff has found that the proposed Master Plan appears to meet the technical standards of the Subdivision Ordinance for Master Plan submittals and, although the development is not consistent with the current density recommendations of the CCP, Staff recommends approval of the Master Plan based upon anticipated changes to the CCP's density guidelines.

Mr. Rhodes had no problem with submitting a Phase II Development Plan for Mountain Shadow rather than including the subject lots as Phase IV of Tranquility Place. Regarding the conservation areas, he stated that the developer plans on building larger lots to accommodate these sensitive natural areas and specifically the areas with steep slopes.

Mark Williams made a motion that the Planning Board find and conclude that the Master Plan for Tranquility Place complies with the provisions of the Subdivision Ordinance except for those matters addressed in Staff Comments section of the memo that need to be addressed; and further move that the Combined Master Plan and Development Plan be approved subject to the following conditions: that the subject lots that was identified on the master plan as Phase IV of Tranquility Place excluded from this master plan and be identified as Phase II Development Plan for Mountain Shadow subdivision. John Antrim seconded the motion and all members voted in favor.

Justus Business Center, LLC – (File # 2006-M47) – Combined Master Plan and Development Plan – (3 Commercial Lots) – Located off Upward Road – Stacy Rhodes, Agent for Jeff Justus, Justus Business Center, LLC, Owner and Developer. Presentation by: Matt Card. (Stacy Rhodes was recused from this subdivision). Mr. Card stated that Stacy Rhodes, on behalf of Mr. Jeff Justus with Justus Business Center, LLC, owner, submitted a Combined Master Plan and Development Plan for a commercial subdivision off of Upward Road. The applicant is proposing a total of three lots on approximately 5 acres of land which will be used for commercial purposes. A portion of the Justus Business Center, LLC property is indicated on the Plan as Phase II with future development

He stated that tract 1 of Phase I currently has businesses operating on the property in an existing one story building. The property and its commercial uses are currently operating under Conditional Use Permit #CU-03-04 granted by the Board of Adjustments on June 25, 2003. CU-03-04 allowed Mr. Justus to develop a shopping center with multiple buildings on property owned by Justus Business Center, LLC. The project site is in the C-4 highway commercial zoning district which regulates the commercial use of land. Public water and public sewer (City of Hendersonville for both) are installed onsite.

Staff has reviewed the submitted Combined Master Plan and Development Plan for Justus Business Center, LLC for conformance with the Henderson County Subdivision Ordinance (HCSO) and offers the comments that follow.

1. **Final Plat Requirements.** The final plat(s) must meet the requirements of Appendix 7 of the Subdivision Ordinance.
2. **Farmland Preservation District.** The Final Plat(s) should include a notation that the property is within ½ mile of land in a Farmland Preservation District. (HCSO 170-35 and Appendix 7)
3. **Water and Sewer.** The applicant has proposed public water and public sewer (City of Hendersonville). According to the HCSO, the applicant must provide evidence that the water supply and sewer system plans have been approved by the appropriate agency. All public or private (community) water supply and sewerage systems shall be installed and shall meet the requirements of the Henderson County Health Department or other government authorities having jurisdiction thereof. The development plan may be approved contingent on final approval from such agencies; however, the final plat shall not be approved until all such final approvals have been obtained. Any subdivision served by a public water system shall meet the respective county or municipality's minimum requirements for fire hydrants installation (HSCO 170-20).

4. **Future Development.** Staff would like the applicant or his agent to discuss the possible future development of Phase II as shown on the attached Plans.

Review Agency Comments

5. **Comments from the Fire Marshal.** The Henderson County Fire Marshal's Office submitted a comment that for commercial developments fire hydrants must be installed and maintained pursuant to Section 508 of the NC Fire Code.

6. **Comments from Zoning Administrator.** Ms. Natalie Berry, Henderson County Zoning Administrator, commented that she noted that any proposed business occupant should fall within the zoning district uses, which is C-4 in this case.

After brief discussion among Board members, Gary Griffin made a motion that the Planning Board find and conclude that the Combined Master Plan and Development Plan complies with the provisions of the Subdivision Ordinance except for those matters addressed in Staff Comments section of the memo that need to be addressed. Mark Williams seconded the motion and all members voted in favor.

The Orchards at Flat Rock – (File # 2006-M48) – Revised Master Plan and Phase II Development Plan – (10 Single-Family Lots) – Located off South Orchard Road – Brooks & Medlock Engineering, Agent and Developer for Lifestyle Homes of Distinction, Owners.

Presentation by: Matt Card. Mr. Card stated that Mr. Shawn Lynch with Brooks and Medlock Engineering and agent for Lifestyle Homes of Distinction, owner, submitted a revised Master Plan and Phase II Development Plan for a proposed nonstandard subdivision titled The Orchards at Flat Rock. The proposed project site for the subdivision is on multiple tracts of land totaling 44.58 acres off of South Orchard Road. The applicant is proposing to add 2 additional tracts of land to the subdivision with 10 new townhouse units in Phase II, a fitness center and some additional common space.

The Planning Board approved the original Master Plan and Phase I Development Plan on September 20, 2005. The original Plan was approved with a total of 212 units with 124 attached townhouse units in Phase I. It was unclear during the original approval if Phase II was going to have single family detached units or townhouse units. Phase II is now proposed to have a total of 98 townhouse units.

The Applicant is proposing five different types of townhouse units. These units vary in square footage and layout. A general unit layout is provided on the attached Plan which shows, in detail, the arrangement of the units. Each unit will have two parking spaces and will have access through a common driveway with no deeded right-of-way. All land outside of the drip line of each individual unit will be designated as limited common space and maintained by a Homeowners Association. Private roads are proposed. The Applicant has proposed that the main roads in the subdivision be 22 feet wide with curb and gutter and have a 45-foot right-of-way. Public water and public sewer (City of Hendersonville for both) are proposed. The project site is located in the Open Use zoning district which does not regulate the residential use of land and density of a project.

He said that the review for townhouse development is outlined in Section 170-15 of the Henderson County Subdivision Ordinance (hereinafter referred to as the HCSO). Sections 170-15 of HCSO states that applications for townhouse developments shall be prepared in conformance with § 170-16 (review for major subdivisions), Articles IV (all areas of review for major subdivisions which includes minimum design standards for roads, water and sewer systems, right-of-way and etc.), Article V (subdivision improvement guarantees) and Article VI

(application, enforcement and legal status provisions). Section 170-15 also states that § 170-21F (minimum curve radius), § 170-21G (intersections), § 170-27 (right-of-way access), § 170-31A (lot dimensions) and § 170-31D (lot configuration and frontage) may be modified by the Planning Board. It also states that the Planning Board may use discretion in applying subdivision standards.

The Applicant, by nature of the townhouse development, is requesting modifications to almost all of the standards listed above in the HCSO. According to the Plan, some curve radii are less than the required 110 feet for collector roads and 90 feet for local residential roads. Right-of way is also modified on the Plan which shows a 45-foot right-of-way and no right-of-way width for the common driveways. Lot dimensions, lot configurations and lot frontage are also modified in the Plan because of the arrangement of a townhouse unit.

With the exception of the increase in the total number of proposed units, the Phase II Development Plan appears to be consistent with the Phase I approval. During the September 20, 2005 Planning Board meeting the Planning Board stated that all driveways that abut 3 or less units be built to a minimum standard of 14-foot wide travelway width. All driveways that abut more than 3 units should be built to a minimum of 16 feet wide travelway width. According to the typical for driveways on the attached Plan, all driveways are proposed to be a minimum of 16 feet in width. All other modifications to the Subdivision Ordinance were approved by the Planning Board during the original approval.

Staff has reviewed the submitted revised Master Plan and Phase II Development Plan for conformance with the Henderson County Subdivision Ordinance (HCSO) and offers the comments that follow:

Master Plan and Development Plan

1. **Private Roads.** Because private roads are proposed, the final plat(s) must contain a note stating: *The private roads indicated on this final plat may not meet the requirements of the North Carolina Department of Transportation for acceptance into the state road system.* (HCSO 170-21B and Appendix 7)
2. **Final Plat Requirements.** The Final Plat(s) must meet the requirements of Appendix 7 of the Subdivision Ordinance.
3. **Farmland Preservation District.** The Final Plat(s) should include a notation that the property is within ½ mile of land in a Farmland Preservation District. (HCSO 170-35 and Appendix 7)
4. **Water and Sewer.** The applicant has proposed public water and public sewer (City of Hendersonville for both). According to the HCSO, the applicant must provide evidence that the water supply and sewer system plans have been approved by the appropriate agency. All public or private (community) water supply and sewerage systems shall be installed and shall meet the requirements of the Henderson County Health Department or other government authorities having jurisdiction thereof. The development plan may be approved contingent on final approval from such agencies; however, the final plat shall not be approved until all such final approvals have been obtained. Any subdivision served by a public water system shall meet the respective county or municipality's minimum requirements for fire hydrants installation (HSCO 170-20).

Review Agency Comments

5. **Comments from the Fire Marshal.** The Henderson County Fire Marshal stated that any structure or housing more than two families must have a fire hydrant located within 400 feet of any portion of the building. All other structures must be located within 1000 feet of a fire hydrant. He also commented that the road width should support two-way traffic for emergency vehicles.

Shawn Lynch with Brooks and Medlock represented the owner of the project and answered some questions of the Board members.

Mike Cooper made a motion that the Planning Board find and conclude that the revised Master Plan and Phase II Development Plan complies with the provisions of the Subdivision Ordinance except for those matters addressed in the Staff Comments section of the Staff memo that need to be addressed. Gary Griffin seconded the motion and all members voted in favor.

Public Input.

Dr. Mary Elizabeth Hunnicutt, who lives on Crab Creek Road near the subdivision development of *Rebecca's Pond*, discussed her concerns with light pollution from the development which is causing constant light, night and day on her property. She realizes that the County can not do anything about this matter, as she will need to take legal action, but she would like the County to consider developing a Light Pollution Ordinance that would restrict light and shield light for non-commercial ventures.

Mr. Parce asked whether the County Attorney could look into the issue about how the Ordinances would be passed and would interact with State Statutes regarding partitioning proceedings. Mr. Starr stated that this does not meet the definition of a subdivision and thereby is not regulated and would already be in place by State Statute.

Subcommittee Assignments and Meeting Dates. Mr. Cooper reminded the Board members of the Special Called Meeting scheduled for Tuesday, November 28, 2006 at 4:00 p.m. to discuss the map portion of the final draft of the Land Development Code. He asked Staff to send out notices accordingly regarding this.

Mr. Williams announced to the Board members that this meeting would be his last as he is resigning from the Planning Board to take office with the Board of Commissioners effective December 4, 2006.

Adjournment. There being no further business, the meeting adjourned at 6:45 p.m. All members voted in favor.

Mike Cooper, Acting Chairman

Kathleen Scanlan, Secretary