

**HENDERSON COUNTY
PLANNING BOARD MINUTES
August 16, 2005**

The Henderson County Planning Board met on August 16, 2005 for its regular meeting at 7:00 p.m. in the Board Room of the Land Development Building, 101 East Allen Street, Hendersonville, NC. Board members present were Tedd Pearce, Chairman; Mike Cooper, Vice-Chairman; Tommy Laughter, Jonathan Parce, Renee Kumor, Paul Patterson, Stacy Rhodes, and Mark Williams. Others present included Selena Coffey, Interim Planning Director; Lori Sand, Project Manager; Autumn Radcliff, Planner; Matt Card, Planner; Natalie Berry, Zoning Administrator; Kathleen Scanlan, Secretary; C. Russell Burrell, County Attorney and Chuck McGrady, Commissioner and liaison to the Planning Board.

Approval of Minutes. Chairman Tedd Pearce presided over the meeting and called the meeting to order. Mr. Pearce asked for the approval of the June 21, 2005 revised regular meeting minutes and the July 19, 2005 regular meeting minutes. Chairman Pearce made a motion to approve both sets of minutes. Ms. Kumor noted on the July 19, 2005 minutes a sentence that she felt should be deleted which was regarding the rezoning request by Blue Ridge Community. It stated, "Ms. Kumor is in favor of using their money from the sale of this subject parcel to purchase funds to expand the college instead of asking the Commissioners to purchase the property." The Board was in favor of the amendment change to the minutes. Ms. Kumor seconded the motion for approval of both sets of minutes noting the amendment to the July 19, 2005 minutes. All members voted in favor.

Adjustment of Agenda. There were no adjustments to the agenda.

Staff Reports. Ms. Coffey briefed the Board members on the process regarding hiring a Planning Director. She mentioned that there will be three interviews this week and follow those with written questions sent out to the ones that they feel do well with the first interview and after that, then another interview will be held.

Mr. McGrady noted that the Board of Commissioners took action on the rezoning request sent by the Planning Board regarding the Swecosky property off Brevard Road. Mr. McGrady stated that the Commissioners did not go with the recommendation of the Planning Board and therefore did not rezone that property.

Chairman Pearce said that reviews of subdivisions would be conducted informally unless the applicant or anyone qualified to participate in the proceeding requests that such review be conducted as a formal quasi-judicial proceeding.

OLD BUSINESS:

Update on Land Development Code Project – Lori Sand, Project Manager. Ms. Sand stated that the Land Development Code team holds meetings weekly and sometimes more often when needed and feels that it is coming along on schedule. She stated that there might be a draft for the Board members at the next Planning Board meeting. Ms. Sand stated that the Board of Commissioners are going to address the outline of the process involved in the adoption, public hearing and recommendation procedure. Ms. Coffey added that this will be discussed at the September 6, 2005 Board of Commissioner's meeting. Mr. McGrady also mentioned that Chairman Moyer's hope is to outline what the public process would be on this proposed ordinance on the front end and put most of that public process with the County Commissioners, who is politically responsible for it. The Planning Board would give the Commissioners thoughts and comments on the draft Ordinance. Ms. Kumor asked, what is the timetable for the Planning Board to get comments back to the Commissioners? Mr. McGrady stated that this will be

discussed at the September 6, 2005 meeting but the expectation that Ms. Karen Smith had always laid out was that by the early fall there would be a document back. He added that Chairman Moyer hopes to have something to the Commissioners by November or December of this year if possible. Chairman Pearce feels that the Board is looking at least sixty days with the document to make recommendation to the Commissioners. Chairman Pearce stated from his discussions about the process, he anticipates that the Planning Board will look at this document section-by-section and vote on a recommendation on each section rather than everyone agreeing on the entire document. After some further discussion on the process, Ms. Coffey stated that the Board of Commissioners are not expected to get a draft until December and that the Commissioners will not hold any public hearings until they receive recommendations from the Planning Board. Ms. Sand stated that draft the Planning Board will receive next month would be complete. She said they will not be receiving new sections as the process goes on, so that should help in the reviewing process and the Board will be able to break it down piece by piece.

Update on Short Term Zoning Subcommittee Meeting Regarding Cemeteries and Land Use Regulations – Matt Card, Planner. Mr. Card mentioned that the Short Term Zoning Subcommittee met on August 2, 2005, to discuss various topics relating to cemeteries including identification on preliminary plans, final plats, access and buffering as it relates to regulations found in other jurisdictions in North Carolina. Justin Hembree, Assistant County Manager and Staff to the Cemetery Advisory Committee, attended the meeting and shared with the Subcommittee some of the focuses of the Cemetery Advisory Committee and topics that the Board of Commissioners want addressed.

Mr. Card said that one of the topics most discussed at the Subcommittee meeting was the issue of providing access and/or easements to abandoned cemeteries, private cemeteries and abandoned private cemeteries. The Subcommittee feels that this is something they want to explore more and that it is an important issue. Some of the access and easement issues discussed at the meeting include:

- Acquiring access to cemeteries
- Protecting private property owners' rights (where cemeteries are found on the property)
- Regulating whom may access the cemeteries
- Regulating time of access for cemeteries

Staff reviewed the North Carolina General Statute requirements again after the subcommittee meeting, with respect to Subcommittee comments and concerns regarding cemetery access and easements. Mr. Card stated that Staff suggests that issues of access are most appropriately addressed in the General Statutes. Staff suggests that easements are not necessary and may be less effective controls for cemetery access than those required by the General Statutes. Staff recommends that General Statutes be discussed (as appropriate) during the subdivision pre-application conference so that the property owners are aware of these potential access issues. He added that Staff could even make an informational brochure that would help the developer to know what they could do, if they had a cemetery on their property.

Mr. Card said that at the Subcommittee meeting, Staff recommended three ways to ensure identification of cemeteries on preliminary plans and final plats. These include amending Appendix 1, the Subdivision Application Form, Appendix 5, the Development Plan Requirements and Appendix 7, the Final Plat Requirements. Amending these Appendices would require that cemeteries are listed, if known, on the Subdivision Application Form and identified on Development Plans and Final Plats. Subcommittee members appeared to agree with Staff's recommendations for amending these Appendices. It is Staff's and the Subcommittee's recommendation that these appendices are amended as stated above and as shown in the attachments. Ms. Kumor stated that it might be helpful to receive comment back from the

community with regard to access issues from the Cemetery Committee that exists. She said that as you read the County's Ordinance, property owners have the responsibility, for abandoned cemeteries, to do something with it with regard to keeping it up. Ms. Kumor said that the State statute will rule, but the Subcommittee felt it was more prudent to be ahead of this issue and allow people to understand that this is going to occur. She added that the Subcommittee felt identification on plans and plats should address the issue in the Subdivision Ordinance appendices, which is the main responsibility that the County has. She said that the other issue regarding access, we wanted to point this out to the Board, is that sometime in the future it might be responsible to look at this because if subdivision designers look at the State statute, they may set up some mechanism to allow some access to a cemetery. She added that under the State statute, they can also move a cemetery, which should be known to any current relatives so that they would not get upset as the current property owner/developer has a right to do this. Chairman Pearce asked whether cemeteries would be part of the new Land Development Code? Ms. Coffey did not feel it would be. Ms. Kumor mentioned as Mr. Card stated it would be a good idea to give out a informational brochure detailing the changes regarding access and land use regulations for cemeteries. After some further discussion, Renee Kumor made a motion that the Subcommittee recommends that the Board amends Appendix 1, the Subdivision Application Form, Appendix 5, the Development Plan Requirements and Appendix 7, the Final Plat Requirements with regard to adding cemeteries to those documents. Jonathan Parce seconded the motion and stated that all of the Subcommittee members were in favor of these amendments to the appendices mentioned. Paul Patterson asked why it was not added to the Master Plan Requirements? Mr. Card stated that it fit better in the Development Plan Requirements, but that it could be added to the Master Plan as well. By adding the Master Plan Requirements, it would affect Appendix 4. Chairman Pearce felt that the motion should also cover amending Appendix 4. Ms. Kumor amended her motion to include Appendix 4 and Jonathan Parce seconded the motion. All members voted in favor.

Three (3) Draft Orders Granting Approval of Development Parcel Application for a Planned Unit Development (Carriage Park, Section 19, Phase II (The Preserve); Section 17 (Carriage Woods); and Section 15 (Carriage Crest) – Planning Staff. Jonathan Parce and Paul Patterson recused themselves. All members were in agreement of the recusal. Chairman Pearce made a motion to approve the three Orders for Carriage Park, which includes Section 19, Section 17 and Section 15. Stacy Rhodes seconded the motion and all members voted in favor.

Revised Master Plan for Pinnacle Falls (File # 2005-M22) - 144 Total Lots Located off Pinnacle Mountain Road – Pinnacle Falls, LLC., Owner and Agent for New Owners Along with Luther E. Smith & Associates, P.A. Stacy Rhodes was recused from any discussion or decision regarding this matter. All members voted in favor of his recusal. Mr. Card stated that Luther E. Smith & Associates, P.A., on behalf of Pinnacle Falls, LLC, submitted an application to revise the Master Plan for Pinnacle Falls. Pinnacle Falls is currently approved as a 110-lot major subdivision on approximately 290 acres of land located on the south side of Pinnacle Mountain Road, between Pinnacle Mountain Road and Cabin Creek Road. Mr. Card stated that the original Master Plan for Pinnacle Falls was presented to the Planning Board and approved with conditions at the November 16, 2004 meeting. The Phase I Development Plan was conditionally approved by the Planning Board at the February 15, 2005 meeting and a variance from certain Henderson County Subdivision Ordinance road standards, for a portion of Pinnacle Falls Lane, was granted by the Board of Commissioners on April 20, 2005. Mr. Card said that Staff approved the Phase II Development Plan on June 23, 2005. The Applicant has posted an improvement guarantee with Henderson County to cover the road and the water distribution improvements for both Phases.

Mr. Card stated that the revised Master Plan proposes to add a total of seven new parcels of land to the project site. One of the parcels is located to the north of the subdivision, across

Pinnacle Falls Lane and is shown on the attached Master Plan as area 1. Mr. Card showed the location on a map, of the areas added. This parcel is proposed to be subdivided into lots 141 and 142. Lots 141 and 142 front on Pinnacle Mountain Road and will not use the Pinnacle Falls road system.

Mr. Card said that shown as area 2 on the attached revised Master Plan, are three small parcels to the west of Pinnacle Falls that will also be added to the subdivision. These parcels are shown as lots 144 and 145. A small pond is currently located on these parcels and the Applicant has indicated in the past that the pond, if acquired, will be used for fire protection. The revised Master Plan also shows a vehicle emergency access road that abuts the pond.

The remaining three parcels of land to be added to the project, located to the southeast of Pinnacle Falls, is shown as area 3 on the attached revised Master Plan. This additional area is proposed to add 30 new lots to the overall project, which will be served by the Pinnacle Falls road system. Two of the owners of these parcels, James and Margaret Welch and Sherri Brewer, are now listed as partial owners of the Pinnacle Falls subdivision and have appointed Pinnacle Falls, LLC, as their agent.

Mr. Card said that Pinnacle Falls would now have a total of 144 lots, which is an addition of 34 new lots. The project site will also now consist of approximately of 349 acres of land, an addition of 59 acres. The revision to the Master Plan does not appear to affect the approved variance and the bonding for Phase I and Phase II. All additional lots and changes to the revised Master Plan will be shown on the Phase III Development Plan.

As with previous Phases of Pinnacle Falls, there will be a mix of community water and individual wells and group septic systems and individual septic systems. Private paved roads are proposed. The applicant has added alternate designed turnarounds at the end of most of the roads. The project area is located in an Open Use zoning district, which does not regulate the residential use of land.

Mr. Card said that on August 8, 2005, Staff met with Jon Cannon with Luther E. Smith and Associates' office to discuss two possible changes to the revised Master Plan. The first is to change Mountain Escape Drive, which, as shown on the revised Master Plan, would be used to access the pond and proposed lots 144 and 145. The new change would reduce Mountain Escape Drive so that it will only access the pond and not the two proposed lots. Lots 144 and 145 would be accessed by the existing Boone Trail road. The second change is to move lots 109, 102, 85 and 90 to a new location in Phase III. Mr. Card said that Lots 109 and 102 were approved in Phase I and a Final Plat has been recorded and Lots 85 and 90 have been approved under Phase II but a Final Plat has not been recorded. Staff suggests that any changes should be shown on revised Phase I and Phase II Development Plans submitted to the Planning Department for review.

It recently came to the Planning Department's attention that a major subdivision, created in February of 1988, had the subdivision name of Pinnacle Falls. The Planning Department did not have plans of this subdivision because it was created before Henderson County's Land Development Ordinance (predecessor to the Subdivision Ordinance) was adopted, but did find record that it exists. Section 170-24 of the current Henderson County Subdivision Ordinance states that the name of a subdivision shall not duplicate a name that is identical to or phonetically similar to any other subdivision or named community in Henderson County. The Planning Department wrote a letter to Pinnacle Falls, LLC, on July 19, 2005, which directed Pinnacle Falls, LLC, and Mr. Julius Hagymassy, owner of the original Pinnacle Falls subdivision, to resolve this situation. Mr. Card added that Mr. Ball has come back to Staff recently and proposed to change the name to Pinnacle Falls Renaissance to alleviate the problem. Mr. Card stated that he talked with the County Attorney regarding this and it seems that changing the

name to Pinnacle Falls Renaissance will solve the problem with the duplicate names, but they will continue to use the Pinnacle Falls name for marketing purposes, because the Ordinance does not regulate that. Chairman Pearce asked whether it might be a problem with the name phonetically being similar? Mr. Burrell stated that the Ordinance only states that the name of a subdivision cannot be identical or phonetically similar and those are the standards that the County is allowed to use.

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

1. **Access to New Parcel.** The new proposed parcels, located to the west of Pinnacle Falls subdivision, where the pond is located, does not currently have right-of-way access from the Pinnacle Falls subdivision. As shown on the attached revised Master Plan, E. K. Thomas owns a strip of land between the above stated parcels and the Pinnacle Falls subdivision. The Applicant should address the intentions of gaining right-of-way to this property with the Planning Board.
2. **Existing Right-Of-Way.** With the revision of the Master Plan, Pinnacle Falls Lane now is shown to overlap the deeded right-of-way which extends down the northwest side of the property and is shown on the revised Master Plan. The Planning Department would like the Applicant to discuss with the Planning Board the Applicant's intentions for this existing right-of-way and access to the properties along this right-of-way.
3. **Cul-De-Sac Design.** Alternative culs-de-sac may be approved by the Planning Board based on sound engineering design and public safety concerns (HCSO 170-21, Table 1 Note 2).
4. **Fire Suppression.** According to the Henderson County Subdivision Ordinance (170-20, C), for any major subdivision without a fire suppression rated water system, that either has or is adjacent to an adequate permanent surface water supply, the applicant may be required to install a dry fire hydrant system, the type and location of which is to be determined by the County Fire Marshal. A road to the water source providing permanent all-weather access to the water source that is adequate for fire-fighting equipment shall be required, if applicable.

Mr. Card stated that all previous conditions from the approvals of the Master Plan and Phase I and Phase II Development Plans still apply and the applicant must satisfy these conditions. He stated that Staff has found that the proposed revised Master Plan for Pinnacle Falls appears to meet the technical standards of the Henderson County Subdivision Ordinance. Staff recommends approval of the revised Master Plan subject to the above listed-comments and any comments being addressed and the developer addressing any other issues raised by the Planning Board.

Mr. Jon Cannon, with Luther E. Smith and Associates and agent for Mr. A.J. Ball, stated that he has been involved in the land planning of Pinnacle Falls. Mr. Cannon stated that originally there were 110 lots that covered approximately 290 acres and the owners acquired seven additional parcels of land to add on another 34 lots to total approximately 350 acres. He said that the idea of Pinnacle Falls originally was to create a very open space conservation-minded development and with the additional acreage, they added additional lots and have tried to cluster those and protect some of the most sensitive steep areas of the site. He said that the idea of the open space and conservation-minded development has been preserved in the fact that the new lots do not take up the majority of the acreage. Mr. Cannon stated that regarding the roads, with regard to the collector standards versus the local residential standards, one road was upgraded to a collector road, Juniper Berry, which originally came across and into a cul-de-sac and

accessed two lots and was a limited-local street. He said that in order to access and serve the additional lots, it is now a collector standard and splits off and becomes two local residential streets to serve the rest of those lots. Mr. Cannon said that to address the hammer-head alternate roads, they have taken them from NCDOT standards and checked with Planning Staff to make sure that the size is sufficient in compliance with what has been approved before by the Planning Board and also make sure that we make a safe turn-around for the larger trucks. He said that the reason we have changed from the cul-de-sacs to the hammerheads, is that there is a number of the situations where the cul-de-sacs created such a large footprint of grading and disturbed a lot more area than was desirable. They left cul-de-sacs where it was more comfortable and not disturbed as much area as the hammerheads did, and this goes along with the conservation of the development. Mr. Cannon stated that regarding the other comments dealing with the two changes. The two lots, west of the site, and how we access those lots down and across, next to the pond, we felt that it would be better to access them from Boondock Trail and to leave the area around the pond open, would also retain the access around the pond for emergency purposes. He added that it is the plan to install a dry hydrant and to use the existing access that is there. Mr. Cannon showed a plan detailing the four lots, which is being proposed to move to the bottom of the development. He said that what they are proposing is, as we spent more time on the site, and looking at each individual lot, they found that four lots had some constraints that we didn't want to destroy. Mr. Cannon then described on the map how they were going to propose those changes.

Mr. Ball, project manager for Pinnacle Falls Renaissance described how they plan on proposing the changes mentioned. He said that when they acquired the property with the pond, they plan on acquiring a dry fire hydrant, but as we looked at access to it, Mr. Thomas' property comes down and there was a small portion of land that prevented us from building that access road at this time. He said that they have been negotiating with Mr. Thomas and offered them three options to acquire that particular easement. Mr. Ball said that he asked Mr. Thomas for an easement and this portion of land would be approximately 50 feet. Mr. Ball stated that we also proposed to Mr. Thomas that we acquire the entire acreage that he owns up there, which Mr. Thomas is considering. Finally, the other option that was offered to Mr. Thomas, was to partner with him and offer to develop it as part of the development on the mountain, which he is considering. Mr. Ball said that he had asked Mr. Luther Smith to put together a land plan for that acreage and came up with a plan for three lots that are very similar in size and topography to sites that have already been developed on the property. He added that the pricing would be very similar and hopefully will be attractive to Mr. Thomas. Mr. Ball stated that at the moment it is still under negotiation. Mr. Ball said that his plans are to meet with Mr. Thomas again next week and find out what can be worked out. Mr. Ball said that there still will be access along Boondock Trail off of Pinnacle Mountain Road, so the only issue is getting access to that pond for fire suppression. He stated that the developer would be willing to build that access road and put in whatever infrastructure is needed to make the access available. Chairman Pearce said that if you do not get an access, you will need an easement to the pond from Boondock Trail. He added that it would be appropriate to have that shown on the plat as such. Mr. Ball stated that it is an existing road with a 60-foot right-of-way and serves existing homes.

The other issue regarding right-of-way is along Pinnacle Falls Lane. Mr. Ball said that the intention was to create a way for Mr. Johnson and Mr. Thomas to get to their properties because they were land-locked and create an easement down there. Mr. Ball stated that the documents state that the easement exists for the use and right of all three owners. He said that what his intention is that he has all the right to put that road along that 60-foot easement and doesn't feel that there is any issue that would be problematic with that particular easement at this time. After some discussion among Board members regarding the right-of-way issue, Mr. Ball stated that he had met with all the parties and said that they did not object. Chairman Pearce was questioned by Mr. Cooper on an issue and stated, "If that property is not contiguous to this subdivision, can it be part of the subdivision?" Mr. Cooper said that there is a 50-foot

strip that separates it, but they do not have the right-of-way at present? After looking on a map of the project, the members found that it does touch the subdivision. Mr. Ball stated that the intent is not to make problems but to work with all of the adjacent property owners. Chairman Pearce recalled that previously the Board ascertained that redirecting the easement with the road like he proposed, did not keep anyone from meeting their rights on the right-of-way. He added that the access to the pond area is an issue and needs to be settled. Mr. Ball said that he will keep the Board informed of any updates to the issue. Paul Patterson asked whether the pond was big enough to accommodate a dry hydrant? Mr. Ball said that it was.

Chairman Pearce made a motion to move that the Planning Board find and conclude that the revised Master Plan for Pinnacle Falls comply with the provisions of the Subdivision Ordinance except for those matters addressed in the Technical and Procedural Comments section of the Staff memo that need to be addressed; and further move that the revised Master Plan for Pinnacle Falls be approved subject to the following conditions: (1) that the access to the new parcel, which is referred as Area 2, that the 60-foot right-of-way be noted on the Plan and also that an access to the pond be provided through an easement or purchase of the property and inclusion of that property, if it is purchased in the subdivision; (2) that comment 2 in Staff's memo regarding *existing right-of-way* be struck; (3) that the Planning Board is specifically approving the alternative cul-de-sacs; (4) that the Planning Board require a dry fire hydrant unless Green River Fire District does not want it; and (5) this project is subject to all previous conditions from the approvals of the Master Plan and Phase 1 and 2 of the Development Plan. Mike Cooper seconded the motion. He added that if they cannot get that access requirement to the pond, they can still get the access through Boondock Trail. Chairman Pearce also added, that it is noted that the name change of the subdivision will be known as *Pinnacle Falls Renaissance* and to move lots 109, 102, 85 and 90 to a new location in Phase III and be shown on revised Plans. Mike Cooper seconded the additions to the motion.

Jerry Cannon, who spoke on behalf of Mr. Hagymassy, owner of the original Pinnacle Falls subdivision, said he was concerned with the name change of the subdivision and felt that changing this to Pinnacle Falls Renaissance is too close resemblance to the original name of Pinnacle Falls for fire and rescue reasons. He suggested that the change in name should be cleared up with emergency services before the name change is granted. Chairman Pearce said that he had brought this concern up with Staff previously, and they feel it comes under the road names statute and that as long as it has a different name, that is as far as the Planning Board has the authority. Mr. Burrell said that the *Subdivision Ordinance* reads that unless it is phonetically or identical in nature, they can keep this name as it does not fall into either category. It is similar but not identical. After some discussion, all members voted in favor of the motion. Chairman Pearce feels that this should be appropriately addressed in the *Land Development Code* and an approval process agreed with the emergency services department.

NEW BUSINESS:

Revised Master Plan and Phase I and Phase II Development Plans for the Mountain Top Area in Cummings Cove (File # 2005- M21) – 65 Single-Family Units (Total for Both Phases) Located off Cummings Road - Don Hunley with William G. Lapsley and Associates P.A., Agent for Cummings Cove Company, LLC, Owner. Mr. Stacy Rhodes returned to the meeting. Mr. Card stated that Cummings Cove is an approved major subdivision located off of Cummings Road. Don Hunley with William G. Lapsley and Associates P.A., and agent for Cummings Cove Company, LLC, owner, submitted the Revised Master Plan and Phase I and Phase II Development Plans for the Mountain Top Area. Mr. Card said that according to Don Hunley, the Mountain Top Area of Cummings Cove, which contains most of the undeveloped portion of land remaining in the subdivision, will be developed in at least six phases. Mountain Crest Section 4 and Section 5, shown on the Master Plan, was administratively approved by Staff on April 28, 2005. The Mountain Top Area, Phases I and II, will be accessed through Mountain Crest

Sections 4 and 5. Mr. Card said that Phase I of the Mountain Top Area will consist of 40 single family lots on 36 acres of land. Lot sizes will range from approximately 0.5 acres to 1.5 acres. Phase II is proposed to have 25 single family lots on 23 acres of land. Public water (City of Hendersonville) and private sewer will serve both Phases. Both Phases lie partially within the Water Supply Watershed IV district which requires a minimum lot size of 20,000 square feet and a 30-foot vegetative buffer from all perennial streams. The project also lies in the Open Use zoning district which does not regulate the residential use of land.

Mr. Card said that Staff has reviewed the submitted Revised Master Plan and Phase I and Phase II Development Plans for conformance with the Henderson County Subdivision Ordinance (HCSO) and offers the comments that follow.

Mr. Card stated that regarding the Master Plan, it appears that all requirements have been met. The following are the Development Plan comments:

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. **Other Final Plat Requirements.** The Final Plat(s) must meet the requirements of Appendix 7 of the Subdivision Ordinance.
3. **Stream Setbacks.** A minimum thirty-foot setback for buildings or other structures is required along all perennial streams. The thirty-foot setback must be noted on the final plat (HCSO 170-37, A). According to § 192-15 of the Water Supply Watershed Ordinance, a minimum thirty-foot vegetative buffer is also required along all perennial streams.
4. **Water Supply.** The applicant has proposed public water (City of Hendersonville). According to the HCSO, the applicant must provide evidence that the water supply plans have been approved by the appropriate agency. The development plan may be approved contingent on final approval from such agency; 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 hydrant installation (HCSO 170-20). According to Wally Hollis the Deputy Fire Marshal for Henderson County, the Henderson County fire department would prefer fire hydrants to be spaced at least 1000 feet or less (see attached comments).
5. **Road Names.** Names for all roads in Phase I and Phase II shall be approved by Henderson County Property Addressing before a Final Plat is recorded.
6. **Flag Lots.** Lots 14 and 17 in Phase I are flag lots. It is unclear how much frontage lot 14 has on proposed road 1A. The Plan shows a 20-foot sewer easement where the lot lines for lot 14 extend to the right-of-way. According to Section 170-28 of the HCSO, all lots must have a minimum of 30 feet of frontage on a public or private right-of-way. The Applicant must demonstrate that lot 14 has 30 feet of frontage on road 1A or revise the Plans to show that lot 14 meets the frontage requirements of the Henderson County Subdivision Ordinance.

Mr. Card said that Staff has found that the proposed Revised Master Plan and Phase I and Phase II Development Plans and for the Mountain Top Area in Cummings Cove appear to meet the technical standards of the Henderson County Subdivision Ordinance. Staff recommends approval of the Revised Master Plan and Phase I and Phase II Development Plans subject to the above listed-comments being addressed and the developer addressing any other issues raised by the Planning Board.

Mr. Patterson asked what the "received" date of the map drawings? Mr. Card stated that it was August 4, 2005, which involved changing their plans to add some elements that were not on the original plan. Mr. Patterson said that on the date it was due it did not meet all the requirements? Mr. Card said yes and that it did not meet the total requirements of the plan. Mr. Patterson asked, "Is this not a requirement that it meets it all?" Mr. Card said that it is, but in the past he has allowed as well as Ms. Smith allowed people to submit plans if other elements were left off. He added that this might be something that the Board might want to address tonight. Chairman Pearce said that this could be addressed separately. Mr. Patterson said that it was addressed previously. Chairman Pearce said that he feels it is more of a procedural issue and needs to be settled with the department.

Mr. Don Hunley with Williams Lapsley and Associates, who was present on behalf of Cummings Cove Company, LLC, said that he has no problem meeting any of the conditions that Mr. Card mentioned and also added that he recognizes the issue regarding a 20-foot sewer easement and that they agree to change so that they will have an adequate easement and correct it on the plat to show this change. After some discussion, regarding Lot 14, it was agreed by Board members to show adequate easement, the 30-foot road right-of-way and that the twenty-foot easement, if it is not allowed to be in there, it would be required for them to take additional space for the 20 foot sewer easement and Chairman Pearce felt that Staff should look further into this issue.

Chairman Pearce made a motion that the Planning Board find and conclude that the Revised Master Plan and Phase I and Phase II Development Plans complies with the provisions of the Subdivision Ordinance except for those matters addressed in the Technical and Procedural Comments section of the Staff memo that need to be addressed; and further move that the Revised Master Plan and Phase I and Phase II Development Plans be approved subject to the conditions as mentioned by Mr. Card and specifically note that on Lot 14 to substantiate a 30 foot road frontage and for Staff to verify whether the 20 foot sewer easement can or can not be in that road frontage area and for Lot 17 to prove that the road frontage is at least 30 feet. Tommy Laughter seconded the motion. All members voted in favor.

Chairman Pearce felt that Staff and the Planning Board need to come to an agreement on the deadline dates for Planning Board agendas and try to set an appropriate time to discuss this issue along with other issues pending. Mr. Patterson added that by clarifying this issue and making it mandatory for everyone, there would be no preferential treatment given.

Pre-Application Conference for Special Use Permit and Proposed Planned Unit Development - Located off North Rugby Road and Butler Bridge Road - Don Hunley with William G. Lapsley and Associates P.A., Agent for Drew Norwood of Windsor-Aughtry Company, Owner. Mr. Card stated that Don Hunley with William G. Lapsley and Associates P.A., agent for Windsor-Aughtry Company, has requested that the Planning Board and Planning Staff hold a pre-application conference for River Stone, a proposed Planned Unit Development. Mr. Card said that the proposed project site for River Stone is off of Butler Bridge Road and North Rugby Road. Mr. Card mentioned the requirements of the pre-application conference. He stated that Don Hunley has submitted to the Planning Department a development strategy and a preliminary Master Plan. The pre-application conference is designed to inform the developer of local government's regulations and policies concerning the development alternatives and to inform the local government of the developer's intentions, enough to be able to give him some informal, nonbinding feedback on the acceptability of his ideas. Mr. Card said that according to Section 200-33 of the HCZO, after the pre-application conference the Applicant must submit to the Planning Board and the Board of Commissioners a written application for a special use permit in accordance with Section 200-70 of the HCZO. After the pre-application conference and submittal of a written application for a special use permit, the applicant must then submit a

development plan to the Board of Commissioners. A second copy of the development plan shall be submitted to the Planning Board for review and a recommendation to the Board of Commissioners. After the Planning Board has given a recommendation, or if no action is taken by the Planning Board within 45 days, the Board of Commissioners may act on the application. While the applicant is going through the process of obtaining a special use permit the applicant must also go through the review process for a major subdivision under the Henderson County Subdivision Ordinance. Mr. Card showed the Master Plan and Development Plan for Sections 1 - 10 to the Board members. He mentioned that the developers propose public water and sewer. Mr. Cooper asked, "How is this development going to affect individual lots as they sell off in developing a lot in a 100-year floodplain?" (Ms. Natalie Berry, Zoning Administrator and Flood Plain Manager left the meeting to check on the flood elevation information and will return with information.)

Mr. Don Hunley, with Williams Lapsley & Associates, stated that some of the maps are inaccurate based on the topography that it was done with and in those cases, if they did a flood study and calculated the actual elevations it would simplify the job. He said that the line identified on the map is the 100-year flood line and is the calculated elevation from the flood study because the flood map is extremely inaccurate and it didn't have any basis. Mr. Hunley also identified on the map, the edge of the floodway regarding this development and that it is from the recently digitized information on the Henderson County GIS program. He also noted that the flood fringe area, which is made up of approximately 45 acres in this development, is that area between those two, which must comply with the new Henderson County Flood Damage Prevention Ordinance. Mr. Hunley stated that they will be filling below that line, but will be done in conformity with the new flood regulations, as the new ordinance allows approximately 20 percent of that area to be filled and will be approved by the flood administrator. Mr. Cooper asked, "Are we talking about 20% of the entire area or 20% of each lot?" Mr. Burrell said that it would be the area in existence the day the Flood Damage Prevention Ordinance was adopted. Mr. Cooper said that it would be the entire tract. Mr. Hunley stated that it would cover two parcels and they will be treated separately and calculate the flood fringe on these two separate parcels and comply with the ordinance individually. Mr. Patterson said that you mentioned you had took the floodway off the digitized GIS map, but the GIS map is hard to overlay because there is no way that it fits the flood maps. Mr. Patterson asked, "Did you evaluate that versus the actual floodway maps themselves showing the floodway?" Mr. Hunley said that he drew it on the plans based on using the flood map and the latest version in the GIS overlay. He added that they will use either method, whichever one the Board recommends.

Mr. Drew Norwood, managing member of Windsor Aughtry, stated that what they plan to create in this development, is a subdivision that will be for the affordable home buyers, that is homes ranging from \$ 135,000 to \$ 250,000. He said they plan on creating approximately three to four neighborhoods in the subdivision. He designated on a map the areas for each type of homebuyers, such as first-time buyers, retiree section and the other area being the homes that will range from \$ 180,000 - \$250,000. Mr. Norwood pointed out that most of the homes usually go to retirees and will probably not have the impact of larger developments of 450-500 homes. He mentioned that the entire project will take about eight years to develop and plan on having a recreation area in the open space area. He said because there are some wetlands in one area of the development, they will be working with the Corp of Engineers as well as the Department of Water Quality to make it a useful development. He said that they have also been talking with the wildlife people about creating some type of nature conservancy as well as making some wooden walking paths to be above the wetland area. Mr. Norwood added that he also plans on taking an area and dedicating it to the nature conservancy. He showed the entrances into the development and wants to begin developing this project as soon as possible.

Ms. Natalie Berry said that they had a detailed study of this area and that there are no elevations, so the floodplain might just affect the outer two lots of the development. They would

be allowed to fill the 20% of the two lots, so therefore she feels it is not an issue. Mr. Norwood stated that he did something similar to another development located in Fletcher. He said he tried to bring the finished elevation of these lots two feet above the flood and then whatever we have displaced or lose, you get back the capacity in terms of depth in the open area. Ms. Berry stated that it is what the County prefers. Mr. Patterson asked, "The elevations overrule what the map actually shows?" Ms. Berry said yes. The maps have been previously drawn from 1982, so the surveyor can actually go out and show the actual lines where they go for the contours and that will override it. Mr. Norwood said that there will be a map amendment once we get a plat recorded and the surveyor goes out and establishes the new elevation, this will be sent to FEMA and then they do a map amendment. This process gets it out of the floodplain. Mr. Norwood added that they will be developing this project totally within the subdivision regulations that apply to this type of development. Chairman Pearce stated that with regard to the County Comprehensive Plan (CCP) in trying to maintain density based upon services, he asked, "If certain amount of the properties are not developable will they be allowed to be included in the computation of the maximum density of the property?" Mr. Card said yes, taking consideration of the entire parcels, even if you cannot develop in it, it will still be accounted for. Chairman Pearce said he feels this is something that should be addressed in the Land Development Code. The Board members discussed the process involved in this project.

Request for a Conditional Use Permit (#CU-05-09) – To Expand a Pre-Existing 6-Unit Shopping Center by Adding 2 More Units in an C-4 Zoning District Located at 2000 Spartanburg Highway - James Kirkpatrick, Applicant. Stacy Rhodes recused himself from any discussion or decision in this matter. Mike Cooper made a motion to recuse Mr. Rhodes and Tommy Laughter seconded the motion. All members voted in favor of his recusal. Ms. Berry informed Board members of the location of this request. Ms. Berry stated that the current building has 6 units and has always been there. There are 3 units in the upper level and 3 units located in the lower level. The applicant is wanting to expand by putting two more units on each side of the upper level only. She said that they will exit off Spartanburg Highway. Ms. Berry stated that the parcel is zoned C-4 and the approximate size of the property in total is 1.09 acres.

Ms. Berry reviewed the conditions as follows:

Dimensional Requirements. Ms. Berry indicated that the dimensional requirements have been met, which are 10 feet from adjoining property boundaries. She said that since the contiguous zoning district is R-10 that is the setback that is required. She said that the applicant does have 60 feet from the centerline of Mount Airy Road, which is the minor street and 75 feet from Spartanburg Highway (US 176), which is the major street setback.

Off Street Parking. Ms. Berry stated that the requirement is 1 parking space per each 300 square feet of gross floor area and that requires 47 spaces, which is shown on the plan the applicant submitted and therefore has been met.

NC Accessibility Code. Ms. Berry stated that the applicant in his proposed site plan shows 3 spaces with one of those spaces being van-accessible, so this requirement has been met.

Off-Street Loading and Unloading. Ms. Berry pointed out the two locations for loading and unloading on the plan and that these requirement have been met.

Signage. Ms. Berry stated that there will be ½" aluminum covered plywood skin on 2 X 6 frame. The overall sign size is 96" X 114" equaling 76 square feet. The sign will provide 8 plaques, with each plaque being 14" X 43" and will be two-sided. Ms. Berry stated that the sign has already been approved, but wanted to show the sign to all Board members.

Zoning. Ms. Berry stated that the zoning that surrounds the parcel of land is C-4. She said that the only issue is that the east side of the property adjoins the Hendersonville City Zoning District, which is zoned commercial.

Ms. Radcliff stated that regarding her comments and recommendations for the conditional use permit, the comment regarding the sign has been satisfied.

Ms. Radcliff said that regarding the boundary consideration; the City of Hendersonville has a map that was approved called the City of Hendersonville Boundary of Consideration. She said it is the area in which they are considering annexing in the future and this particular property lies within that area. Ms. Radcliff stated that the only reason why Staff looks at this map is if you are in this area of consideration and you do anything that requires you to hook up to water and sewer, then the City requires that you get annexed in and it takes it out of the County's hands as far as making any recommendations. Chairman Pearce said he doesn't feel that two more units is not going to require him to be hooked up to the water and sewer. Ms. Radcliff said that she consulted with Ms. Frady, City Zoning Administrator, and she indicated that if you are constructing a new building and going to hook up to water or sewer, that qualifies you to be annexed. She added that in this case they are just doing an addition to an existing building and that they have existing water and sewer, so she doesn't feel it will be an issue, but wanted to make the Board aware of that.

Ms. Radcliff stated that the condition regarding the recombination of parcels has been done.

Ms. Radcliff said that Staff would like addressed the height of the new addition and whether it will meet the 40-foot height restriction for the C-4 zoning district.

Ms. Radcliff stated that regarding the buffering, the site plan indicates that trees will be provided along one side of the shopping center, and the Board should determine if this is sufficient. Also, she asks that the Board specify in the conditional use permit, the timing of installation, how it will be maintained and the type, size and spacing of vegetation.

Ms. Radcliff said that Staff recommends that the standards for lighting and hours of business operation be specified in the conditional use permit and in addition, any time occupancy or change of occupancy for tenants in the shopping center occurs, that the owner notifies the Zoning Administrator so they can apply for any required permits including zoning.

Ms. Radcliff said that the Planning Board may make a recommendation that the Zoning Board of Adjustment approve the conditional use permit application and proposes conditions related to the comments mentioned and ask the Zoning Board of Adjustment to specify time-frames within which the applicant must satisfy any conditions and require that the applicant obtain from the Zoning Administrator confirmation of zoning compliance prior to receiving a Certificate of Occupancy.

Mr. Cooper asked whether there is a buffer requirement between C-4 districts? Ms. Berry said that typically it is only between residential and commercial uses. Mr. Cooper along with some other Board members did not feel that the buffer requirement should be a condition. After some discussion among Board members, it was decided to eliminate the buffer condition.

Board members asked the applicant, Mr. Kirkpatrick whether the new addition will exceed the 40-foot height restriction for the zoning district? Mr. Kirkpatrick stated that it will not be over twenty-two feet.

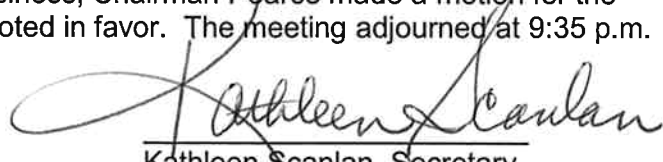
Chairman Pearce reviewed the conditions left for recommendation of the conditional use permit to be forwarded to the Zoning Board of Adjustment.

After some further discussion, Chairman Pearce made a motion to recommend approval of the conditional use permit application # CU-05-09 for Jim Kirkpatrick, applicant to the Zoning Board of Adjustment. The Planning Board is specifically not recommending any buffering, lighting, or hours of operation standards. The Planning Board is noting, according to the developer, that the height of the building with the new additions will meet the 40-foot height requirement. We also recommend that the Zoning Board of Adjustment consider that the Zoning Administrator be notified of any occupancy or change of occupancy for tenants in the shopping center so that they can apply for any required permits including zoning, and that a couple of minor corrections showing the pavement be made. In addition, the Planning Board recommends that the word buffer in the back portion of the property be removed from the site plan as it should not be a condition. Mike Cooper seconded the motion. All members voted in favor.

Subcommittee Assignments. There were no additional subcommittee meetings scheduled. Chairman Pearce mentioned that the Land Use/Zoning Study Subcommittee will meet at 4 p.m. on Thursday, August 18 to discuss and introduce recommendations from the Industrial Site Suitability Analysis.

Adjournment. There being no further business, Chairman Pearce made a motion for the meeting to be adjourned. All members voted in favor. The meeting adjourned at 9:35 p.m.


Tedd M. Pearce, Chairman


Kathleen Scanlan, Secretary