

# **HENDERSON COUNTY PLANNING BOARD MINUTES October 19, 2004**

The Henderson County Planning Board met on October 19, 2004, for its regular meeting at 7:04 p.m. in the Board Room of the Henderson County Board of Education Building, 414 4<sup>th</sup> Avenue West, Hendersonville, NC. Board members present were Tedd Pearce, Chairman; Mike Cooper, Vice-Chairman; Tommy Laughter, Jonathan Parce, Renee Kumor, Gary Griffin and Mark Williams. Others present included Karen C. Smith, Planning Director; Autumn Radcliff, Planner and Kathleen Scanlan, Secretary. Board member Paul Patterson was absent.

Approval of Minutes. Chairman Pearce presided over the meeting and called the meeting to order. He asked for the approval of the Special Called Meeting minutes for September 13, 2004. Mike Cooper made a motion to approve the minutes as presented. Renee Kumor seconded the motion. All members voted in favor.

Adjustment of Agenda. There were no adjustments.

Staff Reports. Ms. Smith reminded the Board members that the Board of Commissioners' quasi-judicial proceeding on the Special Use Permit request for a proposed Planned Unit Development for Leoni's Mountain Lake Homes will be held on Wednesday, November 10, 2004, at 6:00 p.m.

## **OLD BUSINESS:**

Public Input Session for Zoning Map Amendment Application (# R-04-03) to Rezone Approximately 150.31 Acres Owned by Henderson County Government, the Henderson County Board of Public Education and the North Carolina State Highway Commission and Located Near the Intersection of Stoney Mountain Road and Mountain Road from R-20 (Low-Density Residential), R-15 (Medium-Density Residential), and T-15 (Medium-Density Residential with Manufactured Homes) Districts to a C-2 (Neighborhood Commercial) Zoning District. Ms. Radcliff presented a brief summary regarding the application, which was presented at the August's Planning Board meeting. She said on June 4, 2004, the County submitted a rezoning application requesting that 15 parcels of land totaling approximately 150.31 acres, located at and near the intersection of Stoney Mountain Road and Mountain Road with multiple zoning districts be rezoned to a C-2, Neighborhood Commercial zoning district. She indicated that the map shown on the screen outlines the subject area there, the parcels and the current zoning in that location. She noted that there is a current C-2 zoning district in the location of the intersection of NC 191 and Mountain Road and it extends up Mountain Road past the Stoney Mountain Road interchange. She said the subject area is currently zoned R-15, R-20 and T-15 (and has been since January, 1981) and is also located in a water supply watershed. She said the C-2 zoning district, the neighborhood commercial district, allows most commercial uses by right. Most of these uses must be located in an enclosed building or make products sold primarily at retail on the premises. There are also some conditional use permits that can be granted in the C-2 district to allow some other uses. Indicating on a screen, Ms. Radcliff showed that the subject property is located in a WS-IV water supply watershed in which all non-residential development is allowed at a maximum of 24% built upon area or a maximum of 36% built upon area

upon qualification for a natural drainage and filtering system bonus. She said a minimum 30-foot buffer is required along all perennial streams indicated on the USGS topographical maps for development activity and a 100-foot vegetative buffer for development using the special intensity allocation provision. She showed some photos of the subject area and stated that it contains a number of government facilities and includes the County landfill, bus garage, animal shelter and the former NC Division of Prison Facilities, among others. She said the subject area is surrounded by or within the vicinity of both residential and commercial activities including a number of subdivisions, the Historic Johnson Farm, Rugby Middle School and West Henderson High School. The subject area has access to public water services and the closest public sewer line is approximately 0.2 mile southwest of the subject area along Lodge Road. Ms. Radcliff said that at the August 17, 2004 Planning Board meeting, she reviewed the relevant plans and policies including the NCDOT Transportation Improvement Plan and the 1993 Comprehensive Land Use Plan in addition to the 2020 Comprehensive Plan, which was adopted on July 6, 2004 by the Board of Commissioners. She said Staff recommended at that time that the Board address two questions to make a recommendation to send on to the Board of Commissioners about the subject area. The first question was, "Should the existing commercial district at the intersection of Stoney Mountain Road and Mountain Road be expanded and if the Board concludes that it should be expanded, the question would be, is the size of the district appropriate for this location?" Both the text and the map of the 1993 Comprehensive Land Use Plan identified the subject area as being suitable for commercial development and for community facilities, although no recommendation is given in terms of a specific zoning district or the appropriate size of commercial or community facility development. She added that both the text and the map of the 2020 Comprehensive Plan identifies the subject area as being located in the Urban Services Area and the map shows a community service center node comprising the area around the intersection of NC 191 and Mountain Road. She said the 2020 Comprehensive Plan states the Urban Services Area will contain considerable commercial development and a mixture of local, community and regional commercial development. The subject area is also identified as an area where it is anticipated that extensive growth will occur. In addition, the 2020 Comprehensive Plan also states that additional issues may need to be identified and addressed when considering such uses as solid waste and others. Necessary county facilities are not directly addressed in the 2020 Comprehensive Plan, but an objective of the 1993 Plan was to plan for environmentally safe solid waste disposal facilities. The County has acquired additional land surrounding its current facilities to help ensure the safety of the environment and to plan for future expansion as needed.

Ms. Radcliff said that the size of the proposed C-2 district is a concern to the Planning Department but considering the type of uses that have developed in the area, Staff feels, with the exception of the transfer station, landfill, and materials recovery facility, the C-2 zoning district would bring the subject area into a closer conformity with the Henderson County Zoning Ordinance.

Mr. Nicholson said that he is the lead applicant for this proposed rezoning of the acreage owned by the Henderson County Board of Commissioners, Henderson County Board of Public Education and the NC Department of Transportation. He said that he feels that these properties are not residential in nature, unless you consider the fact that the old Stoney Mountain Activity Center was the County Home and that the Department of Corrections had a prison site that kept residents for a period of time, but he generally feels that it is not a residential area. He said that Henderson County purchased the

main bulk of the site of the sixty-nine acre parcel in 1944. This property has been and will be under governmental authority for many years to come. Mr. Nicholson said that the landfill has closed down with the exception of the construction and demolition site (C & D) and the County has to monitor the landfill site for a long time to ensure that it is environmentally closed properly.

Mr. Nicholson said that he does not know the reason why it was zoned residentially to begin with and the reason why they chose C-2 for this area is because it is the most suitable tool presently. He said by proposing C-2 zoning for this area, it would allow the three government units to bring their property into compliance with the Ordinance as well as be able to do things in the future because according to the *Zoning Ordinance*, Section 200-21A(4), public utilities, public facilities and public buildings are permitted uses in C-2. He stated that the reason why the County is asking for this rezoning is to be able to utilize two of the facilities (Department of Education and Department of Transportation) and the County plans to construct a new animal shelter on some of the land and would like to relocate the recycling center on that site too. In addition on that site, the County has discussed building an additional bay for the transfer station. Mr. Nicholson said that the County will be closing down in a few years the C & D landfill and those materials will need to be sent off to a regional facility and another bay will need to be built on that site once that is done.

Mr. Nicholson said that due to an oversight by the Assistant County Manager, there are three parcels that were left out of the original application. One of those parcels, referred to as the "old Trace property", should have been included and he requested that this be included in the application. Mr. Nicholson submitted to Planning Staff a description of the property. He said that there is a barn on the property that the County would like to use for storage of records. Chairman Pearce asked whether the Trace property also includes the house that is on it? Mr. Nicholson explained that the County had initially purchased the property, which included the house, but has since sold it to an individual.

Mr. Nicholson stated that he knows that the Planning Board has to consider all of the possible uses in C-2 and realizes that this is an unusual request because it comes from a Henderson County official. In closing, asked the Board for a favorable recommendation to the Board of Commissioners to allow the County to correct the zoning on this property to bring it in compliance with the Ordinance as well as to allow the County to proceed on the proposed projects.

Chairman Pearce said that in the C-2 zoning district it allows any retail service conducted within an enclosed building, but at this location there are a lot of services being provided that are not in an enclosed building. C-2 allows public buildings and facilities, and he asked if they are required to be within an enclosed building? Ms. Smith said that if the Ordinance does not specify, no they are not. Chairman Pearce said that he has a problem with the old Trace property being added and questions whether the Board can legally add a property to the request because of public hearing notices, etc.? Ms. Smith said that the point at which you can not add to it is once it is sent to the Board of Commissioners and the Board advertises a public hearing. If any substantive changes are made, the Commissioners would need to send it back to the Planning Board. She said that tonight's input session before the Planning Board is not required under the Ordinance, so she feels that it can allow the application to be amended for the addition. Mr. Cooper asked, "The current transfer station that the County built, was it built prior to it being rezoned? Also, the NCDOT has recently built a new facility there,

how do they permit these without proper zoning?" Ms. Smith said the State is allowed to have open uses of land without being regulated by zoning, but if they build a building, they would need to get a zoning permit. She indicated that she believed what he was referring to regarding NCDOT, was a structure they were replacing square foot for square foot. She said that currently the County's solid waste management facilities are not regulated by zoning and were exempted when the County adopted the Open Use District, but if something was done prior to that, it probably would have been interpreted under the civic and cultural definition in the Zoning Ordinance.

Chairman Pearce opened public input on this matter.

Dave Duggin. Mr. Duggin stated that he resides at 1300 Randy Drive and his property adjoins the landfill on the east side. Mr. Duggin said the property under discussion has uses that are not desirable and they are already impacted by visual images, sounds and dust. He said that he was interested and concerned when the topic of zoning arose and wants to guard against any further objectionable uses of this subject property. He was questioning, "Why is this change being sought and what impact would it bring?" Mr. Duggin stated that in checking the County's Zoning Ordinance he can understand the reason for this proposed zoning change for the County's uses, but the property has uses that do not conform with the surrounding R-15 residential zoning. The R-15 zoning still does present some protection. C-2 zoning will lessen that protection. He feels that the C-2 zoning will open the door that might allow future boards to more easily make further changes in zoning. Mr. Duggin feels that the 37.29 acres, referred to and indicated on the map as "O" should be removed from the application as this would offer the residents a degree of protection and openness. He said none of the buildings would be involved but the presence of construction and demolition (C & D). He said that the purpose of his request is that if it has no other use but C & D then it could remain R-15. He also wanted the Board to give careful consideration to deny the rezoning of the Trace tract. He stated that he is also concerned that someday if this subject tracts gets rezoned C-2, there could be an incinerator or cellular tower constructed and for those reasons, he asked that it remain as R-15 zoning.

Barbara Doster. Ms. Doster lives on the parcel between Sutton Place and Randy Drive and abuts the C & D property. Ms. Doster wanted to know what caused this request now? Chairman Pearce said the proposed animal shelter would not conform to the existing zoning and the County made a decision to make a rezoning request for all of the parcels that the County owns there. She stated that she has heard about the list of possibilities that could develop under the C-2 zoning and she feels any of those things listed in the Ordinance could take place. She asked if the County had any plans for anything other than what is presently there now, besides the animal shelter? She also asked if there are plans in the future, will the surrounding property owners be notified of those changes or will it be assumed that they will be approved just because they are in the C-2 listing? Ms. Smith said that there is a list of uses allowed in C-2, and Staff is not supposed to take into consideration the particular uses that are proposed, only to look at the rezoning application and all of the uses that district allows. She added that Staff knows more about this application than we would normally know about any other C-2 application. Ms. Smith said that if the property were to be rezoned C-2 and the use is either a conditional or special use, this would require either the Board of Commissioners and/or the Board of Adjustment approval, there is a public hearing on those issues and adjacent property owners are notified. Ms. Doster asked whether this land could ever be

used as another landfill, maybe on a smaller scale? Mr. Nicholson said that a landfill on that site would not be possible under the new State regulations.

Barbara Bond. Ms. Bond stated that she and her husband live at 515 View Rock Lane, which immediately abuts the "L" shaped extrusion of the parcel labeled "O". She read a letter from her husband, which she corroborates, which states that they support a new animal shelter and also are not opposed to adding office space at the Board of Education bus garage. She said that they recognize the value to the neighbors to keep a viable transfer station and to continue hauling refuse to South Carolina. She stated that they are opposed to an incinerator and see the successful transfer station as the preferred alternative and if a second bay is needed in the transfer station, they would as well support that move. She said that they agree that the existing zoning in no way resembles the current usage, but are concerned that while all of the proposed new uses and construction described will occur on the middle and western two major tracts, the proposal will rezone all three tracts. If the C & D landfill will never be utilized for garbage, then why does the County need to rezone that tract? She suggested to just rezone two of the three tracts and leave the neighbors up on the top of Stoney Mountain with the additional protection that R-15 affords as opposed to C-2. She also indicated that the Board should also exclude the Trace property tract from consideration of the rezoning. She mentioned that although buildings can never be built on the old landfill, a cell tower could be erected which would be undesirable for the community. Ms. Bond, in closing, mentioned that the Board should consider rezoning only the two major tracts to allow for the County's projects but the land adjacent to the neighborhood yards and the Trace property should stay as R-15.

Mr. Williams said that under R-15 zoning, communications towers would be permitted even as it is zoned presently. Ms. Smith said that an existing tower can be replaced and a tower up to 50 feet, such as ham radio towers, are allowed. The only other tower permitted is a 100-foot monopole tower but a permit is required by the Board of Commissioners to do that. Chairman Pearce asked what is allowed under C-2 zoning? Ms. Smith said it would be the same.

David Bayless. Mr. Bayless resides at 290 Randy Drive in Stoney Mountain Estates. He briefly informed the Board members of his personal and professional background. He mentioned that his parents purchased Stoney Mountain in 1965 and he has helped with the planning of the subdivision through his professional background. He said that he supports the three previous people who live around the Stoney Mountain area and what they said. Mr. Bayless feels that the Board members need to think about what the long range aspects will be. He said that although Mr. Nicholson said that obviously the proposed site is non-residential, if you look at the aerial view of the area all the homeowners that talked tonight are in a close proximity to this proposed request and are in a residential community. He asked that the Board look at this issue and consider all aspects as to what the future will be.

Bo Caldwell. Mr. Caldwell stated that he is the Director of Facilities for the public schools system. He said with the increasing number of students in the County there are more buses needed. He said that the present bus garage is old and there have been at least four renovations to it. Mr. Caldwell said that what he is proposing for the bus garage is to add a couple of offices because the State is requiring them to do a program that plots every student and roads where they live in the County to improve efficiency in

the bus routes. He said presently the bus garage is so small that it would not be able to accommodate any offices for this purpose.

Alice Worley. Ms. Worley said her in-laws own property near the area proposed for rezoning. She asked, "What is going to happen to the old prison camp and area where the fence is at?" Chairman Pearce said this is owned by the State and it has given no indication as to what it plans to do with it. Ms. Worley added that she feels that the prison would be a good place to house the animal shelter, as it was used during the storm by the All Creatures Great and Small organization. Chairman Pearce said that unfortunately, the State owns that property and the County does not have any say. Mr. Nicholson said that property has always been owned by the Department of Transportation and it allowed the Department of Corrections to operate on the property. Mr. Nicholson said that the Department of Transportation plans to use it for storage and what is being stored there will remain there. Tommy Laughter asked, "What are the property owners rights after the process goes past the Board of Commissioners?" Mr. Nicholson said that the Board of Commissioners has no choice but to vote for or against. Mr. Nicholson said that it has been discussed to put together a different procedure with regard to property that the Board of Commissioners owns, but that has not been acted upon. He said at this point in time, the Board of Commissioners will make a decision and procedurally if we haven't followed the process, there is always a possibility of an appeal to court. Chairman Pearce asked about the effect on the County's plans if the property that is marked as "O" (C & D Landfill) and the Trace Property were not included in this rezoning application. Mr. Nicholson said if the "O" property is just C & D, it does not have to be changed and it is clearly non-conforming and changing the zoning would make it conforming. He added that it is not buildable land. He said if the Planning Board wants to make a different recommendation to the Board of Commissioners, we could address that at that point. Mr. Williams asked, "What prompted the inclusion of the Trace property in the rezoning application request?" Mr. Nicholson said he had asked about obtaining a zoning permit to store County records in the barn on the Trace property, but was told he would not be allowed to under the present zoning. He said he then asked that this property be included in the request. Ms. Kumor inquired about the cell towers on Stoney Mountain Road and how the airport feels about that? Ms. Smith said that the cellular towers need to meet FAA regulations, so they would have something to say about it. Mr. Nicholson said that in discussing this with the airport, they said they would redirect their traffic if needed to accommodate cellular towers. Ms. Smith said that there is a co-located antenna on one of the large Duke Power transmission towers off Mountain Road, which is the closest tower to that area. Chairman Pearce said that he has a problem with the Trace property being included because he feels that designating a property as commercial at the end of a residential, one-way street would not be done in any jurisdiction, and therefore it does not make any sense to him. He added that if the Board had the right to put conditions such as this on zoning in the Zoning Rewrite it would be a good thing to do, but at this time we do not have the tools to do so in our present Zoning Ordinance. Chairman Pearce made a motion to send favorable recommendation to the Board of Commissioners for Rezoning Application # R-04-03 to rezone approximately 150.31 acres from R-20, R-15, and T-15 to C-2 (Neighborhood Commercial) subject to excluding the Trace property and the property labeled "O" on the map, which is known as the C & D landfill property. Tommy Laughter seconded the motion. The Board members discussed the fact that the only way to access the "Trace" property was by a road in a residential area. Chairman Pearce noted that the County could sell the "Trace" property after it was zoned commercial. Mr. Griffin said that the area of the rezoning has always been commercial

ans now it is being rezoned to make it right. Chairman Pearce said it doesn't hurt the process to exclude the parcel labeled "O" and put the neighbors at rest. After some other brief discussion, Tedd Pearce, Jonathan Parce, Renee Kumor and Tommy Laughter voted in favor of the motion. Mike Cooper, Gary Griffin and Mark Williams voted against the motion. The motion carried four to three.

Chairman Pearce called for a five-minute break.

US 25 North Area Study Update –Planning Board. Ms. Smith stated that this was on the agenda to schedule a subcommittee meeting to continue discussion of the Study Area. Chairman Pearce said that he discussed this with the Vice Chair Mike Cooper, and they feel it might be the best for the Subcommittee to review all of the questions and concerns on the map and any additional requests received, and try to come up with a conservative recommendation on each one of those and bring that to the entire Planning Board at a special called meeting in November so that the Planning Board can send a recommendation to the Board of Commissioners. He added at that time, the Board would not be receiving any more public comment. Ms. Kumor reminded Staff to look into the intersection where Printpak is located as various zoning districts have been requested. It should be looked at consistently instead of piece-by-piece. She asked if that will be something that the Subcommittee will look at? Chairman Pearce said it would. Ms. Smith said that Staff is working on that area of the study. Chairman Pearce then scheduled a special called meeting for the full Planning Board to discuss US 25 North for November 22, 2004, at 6:00 p.m. Chairman Pearce requested that Staff look at a location to accommodate the public for this meeting. Chairman Pearce added that the Board will try to attempt to finish this matter that night, but if it does not, it will, at that time, schedule a continuation of that meeting. He asked that Planning Staff call him to schedule the subcommittee meeting. Chairman Pearce opened the public input for this matter.

Ed Groce. Mr. Groce, who represents Mr. Holbert and his brother, confirmed the time, date and location of the meeting that was scheduled.

Ed Vogel. Mr. Vogel stated that his concern has been with the law and precedence regarding the properties on US 25 North and stated that to the north of this corridor in Fletcher, most of the area is zoned C-1 commercial, and the area south of this corridor, the City of Hendersonville has designated as C-3 commercial. He said that everything that touches US 25 North is commercial, so there is just a small section that is designated historical in Hendersonville. He said that C-4 is a highway commercial district, but the County has proposed very little C-4 zoning for this study area, which it should be. He said there has been designated C-2, which is neighborhood commercial that can be along a major highway, and C-2P, which is preservation neighborhood commercial district, in selected historical communities. He said he had asked the chairman of the historical society whether there were any historical sites located on US 25 North and he mentioned he did not feel that there were any, except for the bed and breakfast located in Mountain Home. He is concerned whether this is legal to designate C-2P in an area that is not historical. Mr. Vogel said that in talking with the Tax Assessor's office, C-4 is the highest property value that can be put on a piece of property. He said that when you take a piece of property that is being used as a C-4, and reduce it to C-2P (such as his property), he does not understand the legality to this. He mentioned that C-4 would be the best and highest use of US 25 North for everyone concerned.

Bryan Vaughn. Mr. Vaughn said that he owns a tract of land along US 25 North and has an auto repair shop in that location. He said since one of the first meetings, the Board has changed their request regarding his property from residential to C-2, which he feels is a step in the right direction. He said he feels that according to the County's Zoning Ordinance, he feels to be in compliance, his property should be zoned C-4 and he would like Planning Staff and the Board to consider C-4 zoning for his property.

### **NEW BUSINESS:**

Review of Proposed Expansion to a Minor Subdivision – Stacy K. Rhodes, PLS, Agent for Canang, LLC, Applicant. Ms. Smith said that when the Subdivision Ordinance was updated in 1999, there were some provisions added regarding how people could expand a Minor Subdivision. Ms. Smith said that what has occurred here is that a purchaser of a lot from a Minor Subdivision would now like to subdivide, but the Ordinance requires that the original owner disclose that further divisions may occur at time of the original application or three years must pass or to bring it before the Planning Board. Ms. Smith said that she doesn't feel that this subdivision should be treated as a Major Subdivision as it has not gone over 10 lots, but she said she had consulted with Mr. Burrell, Assistant County Attorney, regarding this matter. Ms. Smith said she does not feel that they are trying to get around the Subdivision Ordinance, it's just that Canang, LLC, wants to be able to cut their property. Chairman Pearce asked Ms. Smith what Staff's recommendation would be regarding this Minor Subdivision? Ms. Smith said that she would recommend approval, but the Board should put the applicant on notice that if they have any future plans for division of property, they would need to disclose them at this time or wait three years.

Mr. Stacy Rhodes said that the only reason this is done is to limit the lots you can do. He said since Canang, LLC, was not the original applicant, so how would the original applicant know what the future people plan to do with their property? Mr. Rhodes said that here is only a little over 2 acres left and it is in an area where there is no septic, so the most he could do is sell the remaining portion. Mr. Rhodes said that he understands this procedure, but would like for him to have the right to subdivide that or recombine it with the other property. Ms. Smith said Staff could note that in the application folder so they would know that in the future, as long as they do not go over ten lots. Mr. Rhodes asked if there is a place on the application that states you must disclose? Ms. Smith said no, it is just in the Subdivision Ordinance. Chairman Pearce said perhaps Staff and Subcommittee could look at that issue. Ms. Smith noted that the Planning Board can adjust the appendices on their own to reflect this change and could bring it before the Board for discussion. Chairman Pearce made a motion to approve the Minor Subdivision on Staton Road and go with Staff's recommendation. Jonathan Parce seconded the motion. All members voted in favor.

Subcommittee Assignments and Meeting Dates. Chairman Pearce reviewed the new Subcommittee assignments as follows:

#### Land Use/Zoning Study Subcommittee, (maintains the same members):

Tedd Pearce, Chair  
Tommy Laughter  
Mike Cooper



Short Term Zoning Subcommittee:

Renee Kumor, Chair  
Mark Williams  
Jonathan Parce  
Gary Griffin

Subdivision Issues Subcommittee:

Mike Cooper, Chair  
Paul Patterson  
Tedd Pearce

Chairman Pearce officially welcomed Mark Williams to the Planning Board. Chairman Pearce explained the duties and assignments for each subcommittee to the members. He informed the Board members of the resignation of Vivian Armstrong from the Planning Board and mentioned that the Board of Commissioners will be appointing a new Board member to replace her in the near future.

Adjournment. There being no further business, Tedd Pearce made a motion to adjourn and Jonathan Parce seconded the motion. All members voted in favor. The meeting adjourned at 8:45 p.m.

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Tedd M. Pearce, Chairman

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Kathleen Scanlan, Secretary