

REQUEST FOR BOARD ACTION

HENDERSON COUNTY PLANNING BOARD

MEETING DATE: May 16, 2019

SUBJECT: Rezoning Application #R-2019-02C - Owen

PRESENTER: Eric Warren, Planner

ATTACHMENTS: 1.) Staff Report
2.) Site Plan
3.) PowerPoint Handout

SUMMARY OF REQUEST:

Rezoning Application #R-2019-02C was initiated on March 18, 2019 and requests that the County rezone approximately 5.00 acres of land from Residential Two (R2) to Industrial Conditional District (I-CD). The acreage consists of 2 parcels (PIN: 9661-24-1053 & a portion of 9661-13-9920). The property owner is Amber Owen.

The Technical Review Committee reviewed the application at its regularly scheduled meeting on May 7, 2019. All technical requirements are met or listed as a condition of approval.

PLANNING BOARD ACTION REQUESTED:

Staff requests the Planning Board make a recommendation to the Board of Commissioners on rezoning application R-2019-02C which includes two parcels to be rezoned from Residential Two (R2) to Industrial Conditional District (I-CD).

Suggested Motion:

I move that the Planning Board recommend the Board of Commissioners (approve, approve with modification or deny) rezoning application #R-2019-02C to rezone the subject area from Residential Two (R2) to an Industrial Conditional District (I-CD) based on the recommendations of the Henderson County 2020 Comprehensive Plan.

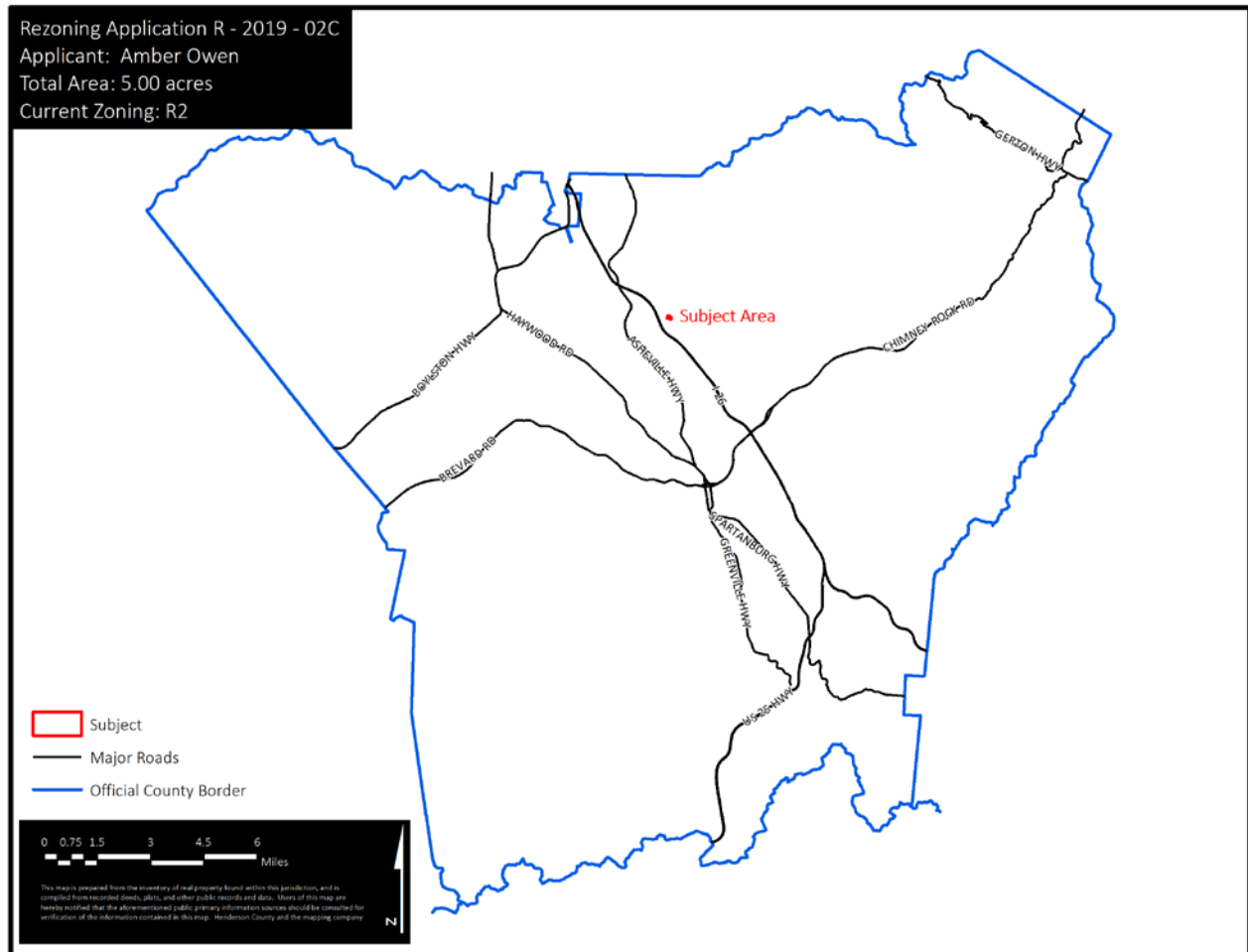
Henderson County Planning Department Staff Report
Rezoning Application #R-2019-02C (R2 to I-CD)

Owner:
Amber Owen

1. Rezoning Request

- 1.1. **Applicant/Owner:** Amber Owen
- 1.2. **PINs:** 9661-24-1053 & a portion of 9661-13-9920
- 1.3. **Request:** Rezone subject area from a Residential Two (R2) zoning district to an Industrial Conditional (I-CD) zoning district.
- 1.4. **Size:** Approximately 5.00 acres
- 1.5. **Location:** The subject is located on Whispering Hills Dr. off Howard Gap Rd (SR 1006)

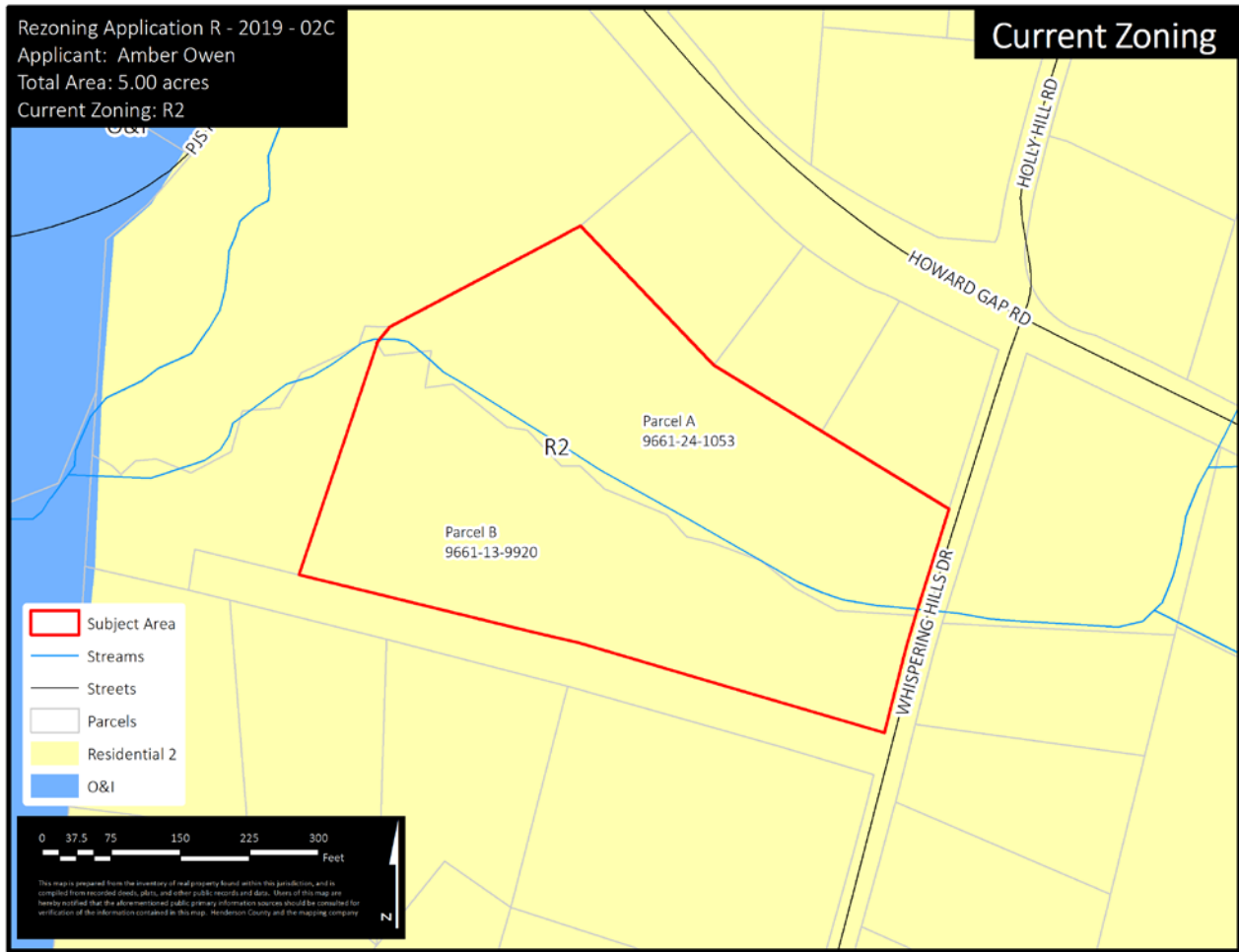
Map A: County Context



Map B: Aerial Image



Map C: Current Zoning



2. Current Zoning

2.1. **Application of Current Zoning:** The subject area is currently zoned Residential Two (R2). The subject area was first zoned Open Use (OU) prior to a 2001 map amendment initiated by Ms. Janis Moore, R-05-01, requesting that Henderson County rezone over 100 separate property owners from OU to a residential zoning district north of Brookside Camp Road, along Howard Gap Road. Planning Board determined the request was too large and too disconnected from other zoning districts to be considered as a standard zoning map amendment application but warranted a comprehensive zoning study of the area. The outcome from the Howard Gap/Brookside Camp Road Area Zoning Study rezoned the subject area from OU to a R-15, Medium-Density Residential District. When the LDC was adopted in September of 2007, property previously zoned R-15 was changed to the current R2 district.

2.2. **Adjacent Zoning:** The subject area is surrounded by Residential Two (R2).

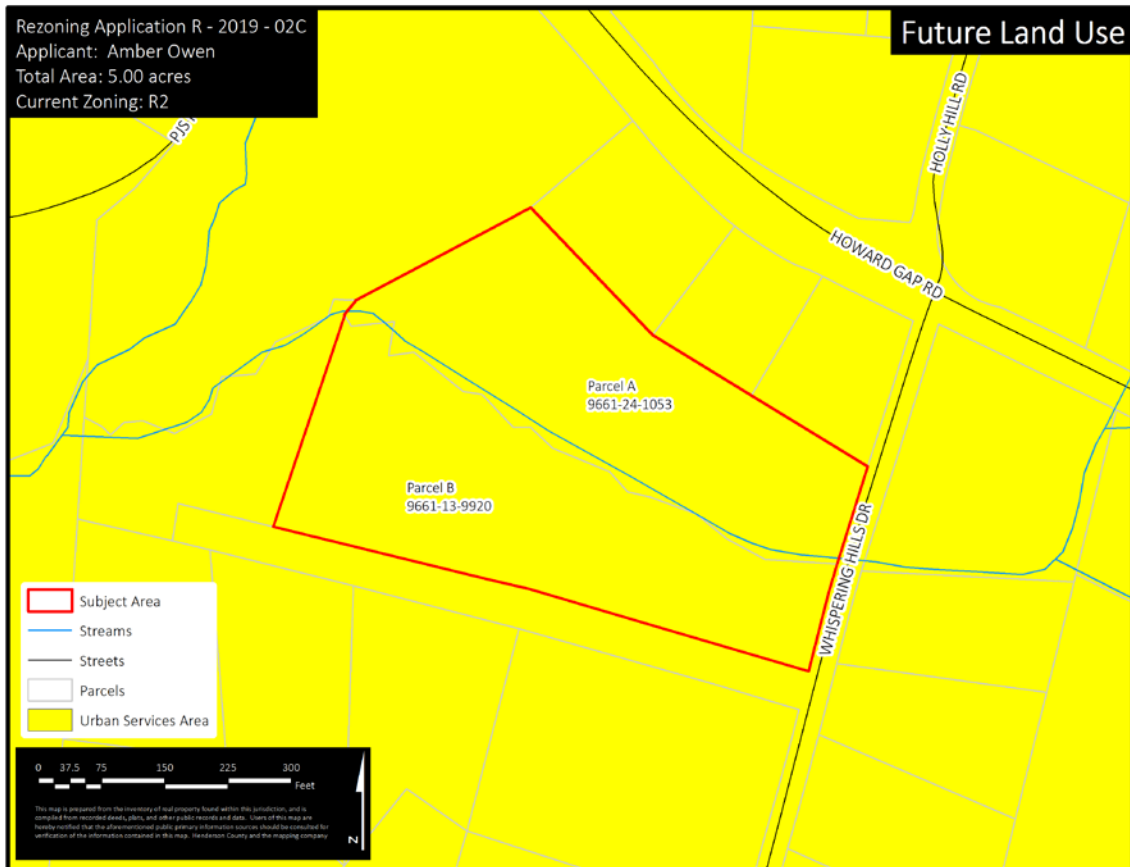
2.3. **District Comparison:**

2.3.1. **Residential Two (R2):** The purpose of Residential District Two (R2) is to foster orderly growth where the *principal use* of land is residential. The intent of this district is to allow for low to medium density *residential development* consistent

with the recommendations of the *Comprehensive Plan*. It is also the intent of this district to allow for flexibility in the continuation of existing nonresidential *uses*. This general *use district* is typically meant to be utilized in areas designated as Transitional (RTA) in the *Comprehensive Plan*. (LDC §42 – 28).

2.3.2. Industrial Conditional Zoning District (I-CD): The purpose of the Industrial District (I) is to foster orderly growth where the *principal use* of land is a mixture of industrial and heavy commercial. The intent of this district is to allow for *industrial* and heavy *commercial development* consistent with the recommendations of the *Comprehensive Plan*. In accordance with the *Comprehensive Plan*, the district will allow for and provide *industrial* and heavy *commercial development* that: (1) is compatible with adjacent development and the surrounding community; (2) will minimize conflict between land *uses*; and (3) is sensitive to its impact on surrounding land *uses* and the environment (natural and man-made) (LDC § 42 – 36). “Conditional Zoning Districts are created for the purpose of providing an optional rezoning choice where the owner of property proposes to rezone property and, in order to, among other reasons, carry out the purposes of the *Comprehensive Plan*, proposes to impose special limitations and conditions on the use of the property proposed for rezoning” (Chapter 42, Land Development Code §42-45). Conditions may be imposed in the furtherance of the purpose of the LDC and the recommendations of the County *Comprehensive Plan*.

Map D: 2020 County Comprehensive Plan Future Land Use Map



3. Current Uses of Subject Area and Adjacent Properties

- 3.1. **Subject Area Uses:** The subject area is composed of two separate parcels, PIN(s) 9661-24-1053 & a portion of 9661-13-9920. PIN 9661-24-1053, Parcel A, currently contains an existing trucking and hauling business that has been in operation since the purchase of the property in 1999. PIN 9661-13-9920, Parcel B, is currently vacant and was acquired by the property owners in 2018.
- 3.2. **Adjacent Area Uses:** There are residential, agricultural, waste water treatment, and vacant land uses surrounding the subject.
- 3.3. **Proposed Use:** The applicant is proposing to use the vacant property as a storage yard for the equipment utilized for the existing business.

4. The Henderson County 2020 Comprehensive Plan (CCP)

- 4.1. The CCP Future Land Use Map identifies the subject area as being in the Urban Services Area (USA). (2020 CCP, Pgs. 128, 129 & Appendix 1, Map 24). (See Map D).
 - 4.1.1. **Urban Services Area:** The CCP states that, “the USA will contain considerable commercial development at a mixture of scales,” and further, “all regional commercial development should be concentrated here. Commercial development will exist within predefined zoning districts whose standards and configuration are in keeping with the surrounding community. The USA will essentially contain all existing and future industrial developments, which will be the future focus of economic development activities” (2020 CCP, Pg. 129).

- 5. **Water and Sewer:** The subject is served by individual water, and waste water systems. The proposed garage building is for storage only and will not be served by water or sewage disposal. The Mud Creek Interceptor project for the Cane Creek Water and Sewer District is proposed to be built in this area and will be within two parcels to the west of the subject.

- 6. **Nonconforming Uses:** Parcel A of the subject area is classified as nonconforming according to Chapter 42 of the Land Development Code (§42-299). Legally established commercial and industrial uses/structures within the former Open Use (OU) zoning district that were made nonconforming by the adoption of the Land Development code shall be allowed to make improvements, expansions, repairs, and reconstructed with the applicable dimensional requirements under the current zoning district. Parcel B does not fall within the nonconforming classification because it is vacant and was acquired after the adoption of the Land Development Code.

7. Staff Comments

- 7.1. **The 2020 CCP:** The CCP Future Land Use Map (See Map D) places the Subject Area in the Urban Services. The text and map of the 2020 CCP suggest that the Subject Area would be suitable for residential development.
- 7.2. **Zoning History:** Open Use to R-15: November 12, 2002, R2: September 19, 2007.
- 7.3. **Nonconforming:** The Parcel A of the subject area that contains the existing use can continue to operate under the nonconforming classification as defined in Chapter 42 of the Land Development Code (§42-299).
- 7.4. **Spot Zoning:** North Carolina courts do not characterize small-scale rezonings as a quasi-judicial process. “As a general rule, legislative decisions regarding zoning – decisions to adopt, amend, or repeal a zoning ordinance – are presumed to be valid, and the judiciary

largely defers to the judgment of local elected officials on such matters. (“Spot Zoning” David Owens, NC School of Government, 2014)

7.5. The rezoning, if approved, will result in a split zoned parcel with approximately 0.93 acres remaining in Residential 2 (R2) zoning district.

7.6. Staff has received five (5) letters of support from neighboring property owners and two (2) complaints of applicant using property prior to approval.

8. Recommended Conditions

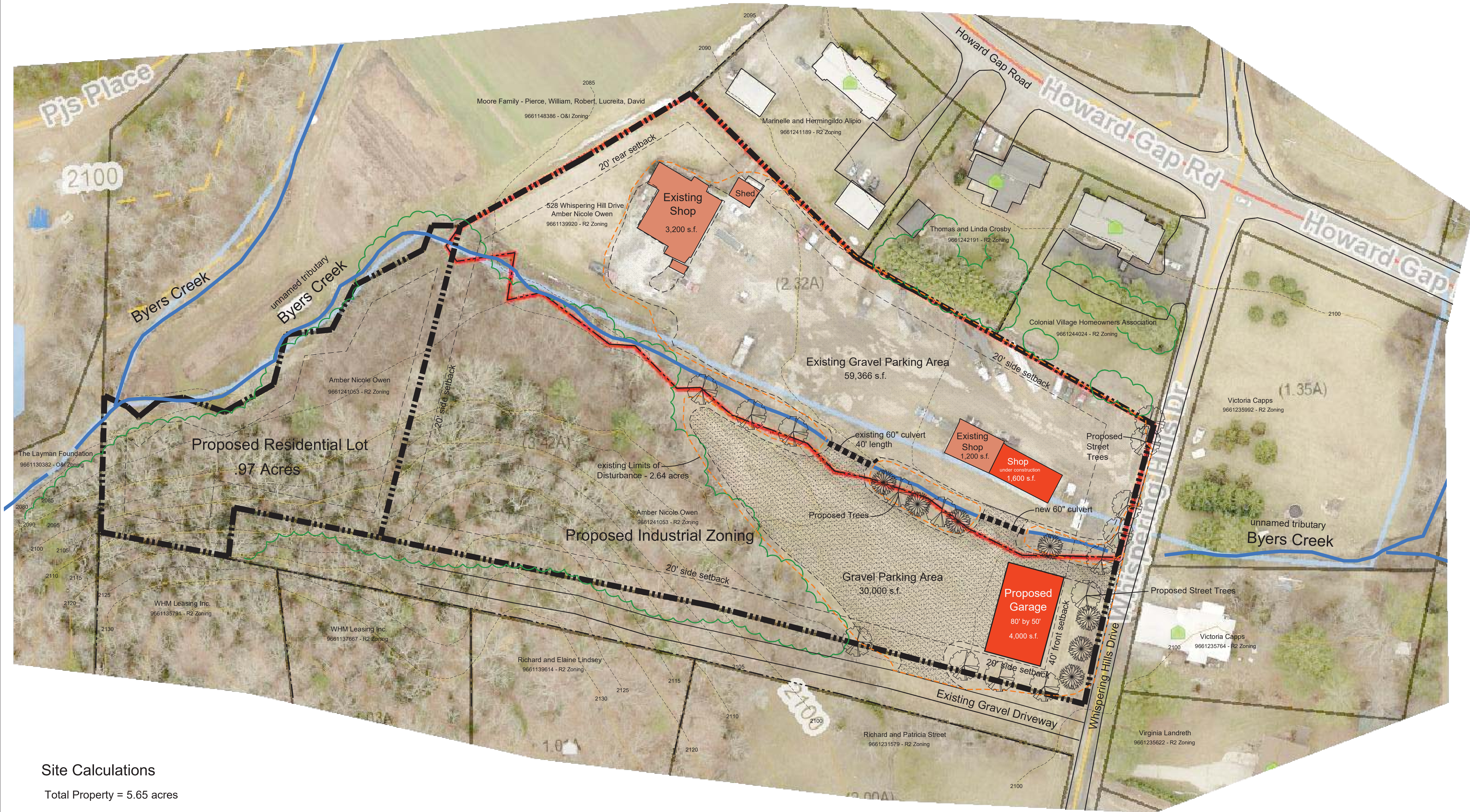
8.1. **NCDOT Driveway Permit:** If required by the NCDOT, a driveway permit shall be obtained.

9. Technical Review Committee Review

9.1. The TRC reviewed the application at its meeting on May 7, 2019 and found that all technical requirements were met or have been added as a condition of approval.

10. Planning Board Recommendations

10.1. The Planning Board will review the application at its meeting on May 16, 2019.



Site Calculations

Total Property = 5.65 acres

Total Existing Disturbed Area = 2.64 acres

Total New Disturbed Area = 0 acres

Percentage of Property Disturbed = 47%

Total Existing Impervious Area = 1.52 acres

Total New Impervious Area = .78 acres

Total Property Impervious Area = 2.30 acres

Percentage of Property Impervious Area = 41%



North



SCALE : 1" = 40'

Other Consultants:

Owner
Amber Nicole Owen
P.O. Box 2161
Fletcher, NC, 28732

Project:
Owen Property
528 Whispering Hills Drive
Pin # 9661139920 and 9661241053
DEED BOOK 3155, PAGE 222
Hoopers Creek Township Henderson County

Sheet:
Site Plan

Designed By:
cds Creative Development Solutions
landscape architecture | land planning | community and resort design
1003 4th Avenue West, Hendersonville, North Carolina 28739
P: 828.696.9992 | F: 828.696.9994

ISSUE DATE: April 8, 2019
REVISIONS:
DESIGNED BY: DB
DRAWN BY: SB
APPROVED BY: DSB

Project Number:
SHEET NUMBER:
L2

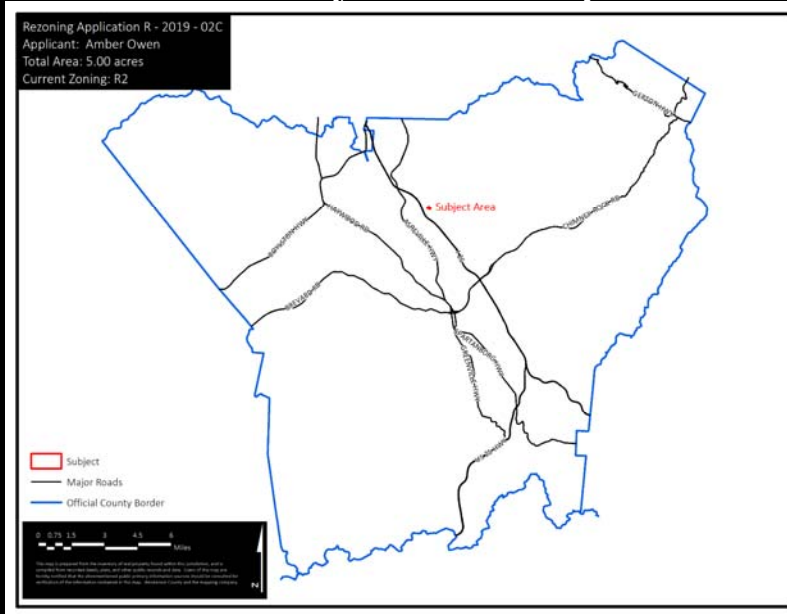
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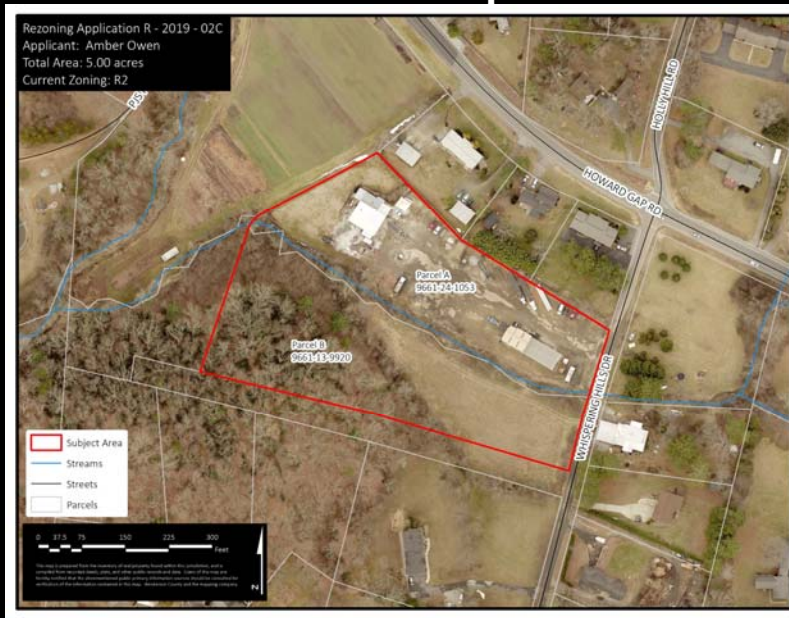
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County Context Map



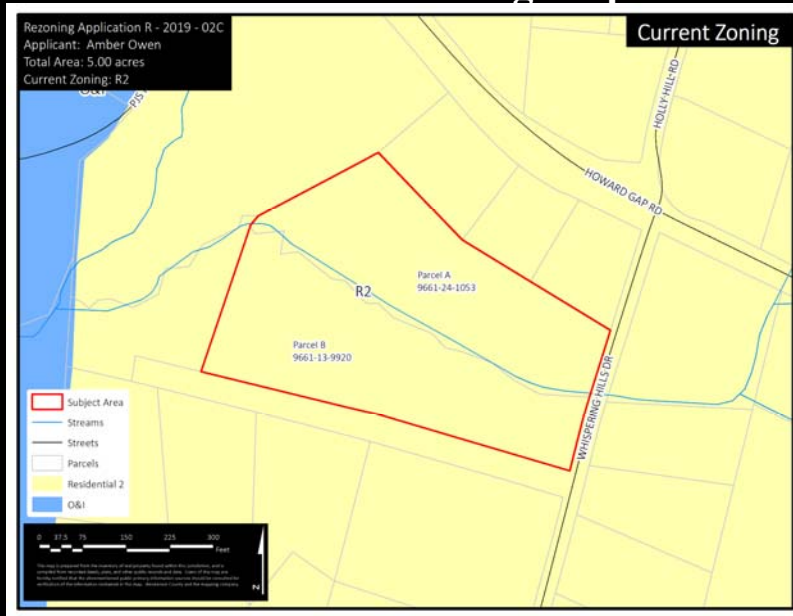
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Aerial Map



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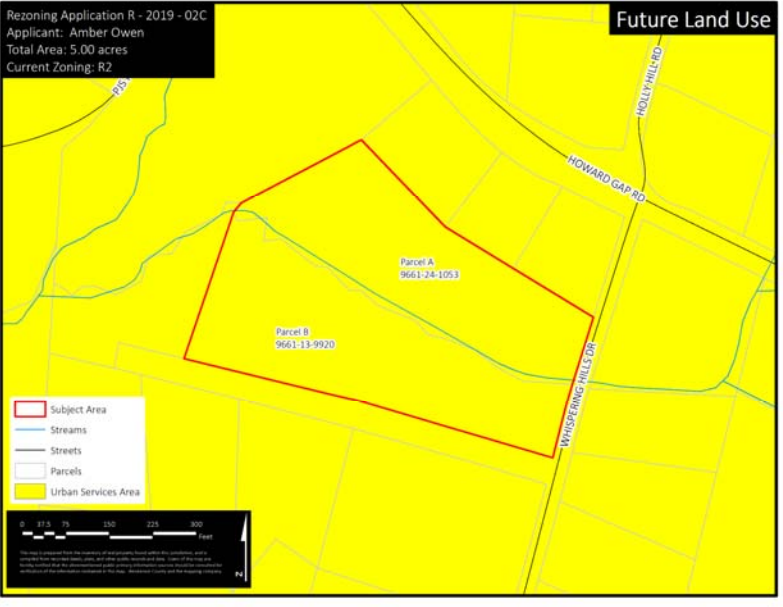
Current Zoning Map



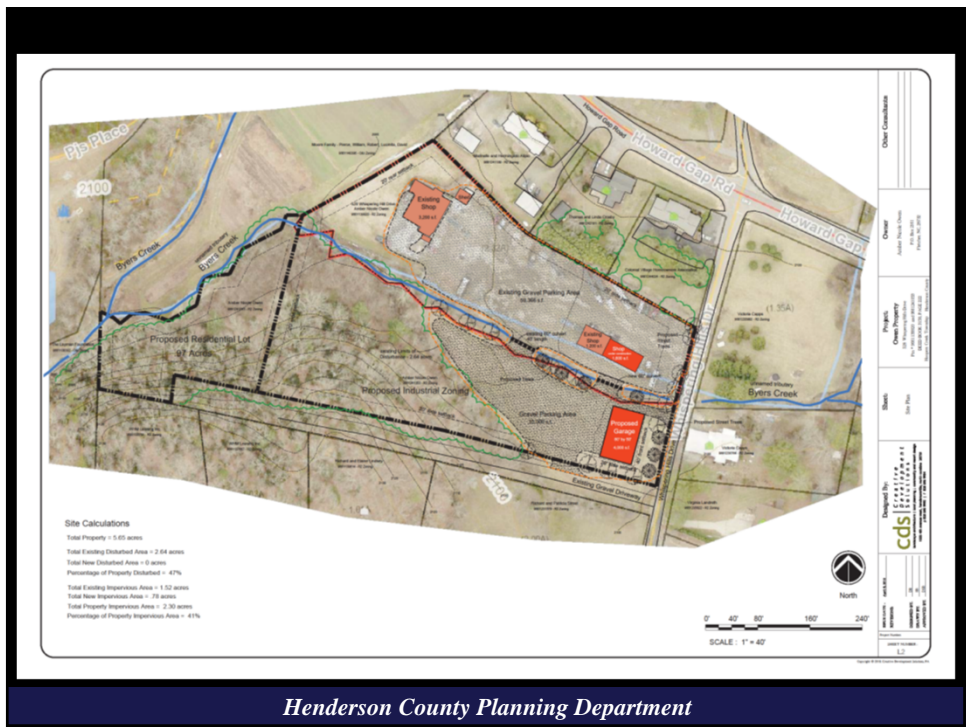
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EW1

CCP Future Land Use Map



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Questions

