

MINUTES

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

**BOARD OF COMMISSIONERS
AUGUST 2, 2005**

The Henderson County Board of Commissioners met for a special called meeting at 6:00 p.m. in the Commissioners' Conference Room of the Henderson County Office Building.

Those present were: Chairman Bill Moyer, Vice-Chairman Charlie Messer, Commissioner Larry Young, Commissioner Shannon Baldwin, Commissioner Chuck McGrady, County Manager David E. Nicholson, County Attorney Russell Burrell, and Clerk to the Board Elizabeth W. Corn.

Also present were: Acting Planning Director Selena Coffey, Planner Autumn Radcliff, and Public Information Officer Chris S. Coulson.

CALL TO ORDER/WELCOME

Chairman Moyer called the meeting to order and welcomed all in attendance.

PUBLIC HEARING – Rezoning Application #R-2005-04 – to rezone a 3.17 acre (approximate) parcel of land, located off Brevard Road, from an R-30 (Low-Density Residential) zoning district to a C-1 (Residential Commercial) zoning district.

Commissioner Messer made the motion for the Board to go into public hearing. All voted in favor and the motion carried.

Staff Overview

Autumn Radcliff informed the Board that rezoning application #R-2005-04 was submitted on May 23, 2005 requesting that the County rezone a 3.17 acre (approximate) parcel of land, located off Brevard Road (U.S. Highway 64), from an R-30 (Low-Density Residential) zoning district to a C-1 (Residential Commercial) zoning district. In addition, the Subject Area is located in a WS-IV (Upper French Broad River (Asheville), Protected Area) Water Supply Watershed. The Applicants are Shane & Sara Swecosky, and the Applicant's Agent is Angela Beeker.

The Henderson County Planning Board first considered rezoning application #R-2005-04 at its regularly scheduled meeting on Tuesday, June 21, 2005, at which time the Board voted unanimously (9-0) on a motion to send the Board of Commissioners a favorable recommendation on rezoning the Subject Area to a C-1 zoning district.

Before taking action on the application, the Board of Commissioners must hold a public hearing. In accordance with Section 200-76 of the Henderson County Zoning Ordinance and State Law, notices of the August 2, 2005 public hearing regarding rezoning application #R-2005-04 were published in the Hendersonville Times-News on June 20, 2005 and June 27, 2005. The Planning Department sent notices of the hearing via first class mail to the applicants and owners of properties adjacent to the Subject Area on June 21, 2005. Planning Staff posted signs advertising the hearing on the Subject Area on June 22, 2005.

The Subject Area is located off Brevard Road and is located over ½ mile approximately southeast of the intersection of Brevard Road and South Rugby Road. The Subject Area has been zoned R-30 since at least 1981 and is surrounded by an R-30 zoning district and is approximately 140 feet northwest of an existing C-1 zoning district that was applied in 1996 as part of a rezoning application. The Subject Area is also located approximately ½ mile east of a C-2 zoning district and approximately 3/10 mile southwest of an R-10 and T-15 zoning district. In addition the Subject Area is located approximately 2/10 mile north, south, and east of an R-40 zoning district. The R-30 zoning district, the current zoning, is intended to be a quiet low density neighborhood consisting of single family residences. Site built modular residential units are permitted by right while manufactured homes are not. Commercial uses are not allowed.

DATE APPROVED _____

The C-1 Residential Commercial District which is proposed for the Subject Area is intended to provide for a range of office, retail, and service establishments of small to moderate size for small well-landscaped parking areas to be available to residents of nearby residential areas while maintaining the character and integrity of the neighborhood. The objective is to provide neighborhood conveniences and small commercial establishments without nuisance factors such as constant heavy trucking and excessive noise, dusts, or odors. The classification will be considered where proximity to residential areas, existing land uses, traffic patterns and other factors make it desirable to maintain a commercial character which is less intense than that permitted in the C-2 Neighborhood Commercial District. The character of this district shall be compatible with surrounding districts with regard to aesthetics, density, bulk and space. The WS-IV Watershed allows for single family residential uses to be developed at a maximum of one dwelling unit per 20,000 square feet. All non-residential development shall be 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. A 70% built upon area is allowed with a Special Intensity Allocation. This property is located in the WS-IV Watershed and it would have to comply with the percent built upon area. There are two streams on the property but neither is considered a perennial stream on the USGS topomap and therefore would not have to have a buffer.

The Subject Area is currently vacant. Most uses within the vicinity of the Subject Area are residential, agriculture, or commercial. Residential uses include Robin Crest Subdivision to the west, Hunter's Glen Subdivision to the southwest and a number of single family residential homes that surround the Subject Area. In addition a number of farms and churches are within the vicinity of the Subject Area including Brevard Road Baptist Church to the southeast, Horse Shoe Baptist Church immediately to the left, and Shaw's Creek Methodist Church and Campground to the northwest. Commercial uses include the Horse Shoe Gap Antique Village and General Store, the Pooch Parlor Dog Grooming all to the south of the Subject Area. At the intersection of South Rugby Road and Brevard Road and at the intersection of Banner Farm Road and Brevard Road are several non-residential uses just west of the Subject Area which include the Hungry Bear Restaurant, the Horse Shoe Hardware, a plant and herb sale center, Carolina Precision Tile, the Horse Shoe Post Office, the Plaza of Horse Shoe, a gas station, and the Horse Shoe Crossing Shopping Center. The City of Hendersonville has a waterline along Two Tree Drive northwest of the Subject Area. Public sewer service is not available to the Subject Area at this time.

Based on the following, staff does not support a C-1 Residential Commercial zoning district for the Subject Area:

1. Both the text and the map of the CCP identify the Subject Area as being located in the Urban Service Area (USA) and state that the USA will contain considerable commercial development and a mixture of scales, local, community and regional. There is an existing commercial node that is identified as a community service center which is not adjacent to but within ½ mile east of the Subject Area and already contains both C-1 and C-2 commercial zoning.
2. The CCP calls for community service centers to be located in unified development concentrations at intersections of selected thoroughfares and in central locations that are convenient to nearby residential development so as to minimize problems associated with strip commercial development.
3. Although the Subject Area is located in very close proximity to the existing C-1 zoning district which was applied as part of a rezoning application, neither the Planning Staff nor the Planning Board recommended a commercial zoning district at that location.
4. The Subject Area does not directly abut the existing C-1 zoning district and according to the Henderson County Zoning Administrator would be considered as two separate C-1 districts. Therefore due to the maximum C-1 zoning district acreage restriction of 5 acres abutting property to the existing C-1 zoning district and adjacent property to the subject area would have to remain residential or be rezoned to a commercial zoning district other than C-1. The Subject Area is identified as being in a priority 3 community planning area, the Etowah/Horse Shoe/Mills River South Planning Area within a community based planning framework and is scheduled to begin in fiscal year 2005-06. In addition, the county is currently working on its new Land Development Code that could replace these existing zoning districts, allow a greater use of mixed use district, and offer more protection to the residents.

At this time staff had identified no plans or policy changes in existing conditions or over-riding community interest that would justify granting the proposed rezoning and is also generally incumbent upon the applicant to demonstrate an over-riding justification for approving a given rezoning application. The applicant has submitted information that would inform the County's consideration of the proposed rezoning.

Planning Board Recommendations

The Henderson County Planning Board first considered the rezoning request at its regular scheduled meeting on Tuesday, June 21 at which time the Board voted unanimously (9-0) on a motion to send the Board of Commissioners a favorable recommendation on rezoning the Subject Area to a C-1 zoning district. This was based on the following:

1. It is a relatively small parcel and the uses allowed in the C-1 zoning district would fit the profile of the area businesses that are already there.
2. The C-1 zoning district would require 35% of the parcel to be landscaped.
3. The uses allowed in the C-1 zoning district would demand a high noticeable traffic area, and based on information and statements by the applicant, the surrounding property owners support the rezoning application.

Agent for the applicants – Angela S. Beeker

Ms. Beeker introduced her clients: Sara and Shane Swekosky, who are the applicants in this matter. Ms. Beeker stated that C-1 is a district that is intended to be in and surrounded by residential properties. It is intended to be a spot, the maximum size of a C-1 district is 5 acres which is a fairly small district. This lot is 3.17 acres and the lot across the road diagonally is 1.06 acres (zoned C-1) so even with adding those two parcels together you're still not up to the 5 acre maximum. It would lie within this Board's discretion as to whether the Board would allow any more C-1 at the location so the potential for the C-1 acreage to grow beyond the 5 acre intent lies entirely in the Board's hands even though the two acreages don't touch. Ms. Beeker stated that this property is consistent and compatible with the residential zoning because of the small size. There are some safeguards that are built into the C-1 district to make it compatible with residential zoning. One of those is that 35% of the total land area has to be landscaped. There is a 15 foot wide buffer requirement around the boundary when it abuts a residential district and the site plan must be approved by the Zoning Administrator before the zoning permit will be issued so that the Zoning Administrator can check for compliance with the applicable laws and regulations and the intent of the ordinance. This property is within the urban services area and is ½ mile from the community node that is identified on the Land Use Plan. Ms. Beeker stated that she understood that those nodes were intended to have very generalized boundaries. She and her clients feel that it is in close enough proximity to that node to be considered part of it.

Ms. Beeker distributed copies of photographs taken of the property in question and some of surrounding properties. She reviewed those with the Board. Ms. Beeker also distributed an excerpt from the average daily traffic count maps and reviewed that also. Ms. Beeker then distributed an excerpt from Westlaw regarding legislative rezonings and had highlighted the part that she reviewed with the Board. In N.C. rezonings are legislative, meaning that the Board has all the discretion.

Ms. Beeker also reiterated that the Planning Board voted 9-0 to support this application in spite of staff's recommendation. The Planning Board felt that this would be an area that is appropriate for small scale commercial development that would be allowed by the C-1 zoning. She spoke about the sewer issue stating that the uses that would be allowed (small retain uses) domestic sewage would be all that would be required. Likely a septic system would suffice and there is plenty of land for a septic system, assuming it perks. She felt that being in the WS-IV watershed would not be an impediment to allowing commercial development here because the 10/70 option does anticipate commercial development in a WS-IV.

Sara Swekosky thanked the Board for hearing their request. She stated that she does appreciate comments and opinions, she respects others opinions. Her family lives on the property directly behind the property in question so they are neighbors of the Subject Property. The restrictions of C-1 zoning are important to them

as a family. The future of the community is important to them also. She stated that they had gone to neighbors of the property who directly sit beside and in front of the property and the majority of them are in support of the rezoning. She had signatures of the neighbors and passed those up to the Board. Hendersonville is growing and along with that businesses have to grow. By rezoning the property the Board would help support local small business growth.

Shane Swekosky stated that they feel this is in a high traffic area but it will not be a high traffic business, it will reflect what is across the street and will fit to the character of what is already nearby. They feel it will look nice and it will be a family-owned business.

Public Input

1. Frank Dezzuddo – Mr. Dezzuddo lives in the Tamarac Subdivision and is the current President of the Tamarac Homeowners Association. He also owns approximately 7 acres of land abutting the north side of Hwy. #64 and it also includes a lot in the Robin's Crest Subdivision. The Tamarac Homeowners Association Board members unanimously opposed this rezoning. The Tamarac Subdivision is northwest of the proposed C-1 zoning district and consists of 80 residents. Two residents are adjacent to or very near the proposed zoning district and both property owners oppose this change. They oppose the rezoning because, in their opinion, the rural residential character of the Horse Shoe area has already been impacted by extensive commercial development as pointed out by the speakers prior to him. This, they think, will ultimately result in a lower valuation for residential property, especially for property located nearby. He stressed that the Planning Department staff has recommended against the rezoning because the appropriate area for commercial development is at the intersection of South Rugby and Highway 64. Mr. Dezzuddo stated that traffic on Highway 64 continues to increase and the DOT has no projects planned for Highway 64 West in the 2006-2012 Transportation Improvement Plan. The proposed zoning district would increase the risk of accidents. He urged the County Commissioners to deny this rezoning application, which if approved would lower valuation of nearby residential properties and compromise public safety. He read letters of other property owners who were in opposition.
2. Dan Griffiths – Mr. Griffiths introduced his wife, Wanda, who was in the audience. He stated that they are the owners of the property on the south side of Highway 64, approx. 8 acres. He stated that before they bought the property that has several commercial buildings on it, it was a disaster. When they acquired it about 1997 they worked tirelessly hauling off junk and trash and cleaning the place up. They now have a beautiful home and a beautiful yard. They lived in it while they built a new home. They now pay taxes on property that is assessed at over \$400,000 in the area. They can see the property in question from their front door and yard. They don't like the idea of having to look at a business, this is a residential area. It is zoned R-30 and they want the area kept that way.
3. D.L. Cairnes - Mr. Cairnes lives at 560 Westbrook Road. He is Chairman of the Trustees of Horse Shoe First Baptist Church. The Subject Property joins their parsonage property and it is approximately 3.5 acres. They object to the rezoning, mainly because it would lower the value of the adjoining properties.
4. Charles Snead – Mr. Snead lives in the Tamarac Subdivision at 134 Larchmont Drive. Much had already been said that he would have said if he hadn't already heard it. He stated that he strongly objects to the rezoning.

Angela S. Beeker, agent for the applicants

Ms. Beeker emphasized that the character of the commercial uses that are allowed in a C-1 is small retail. She had advised her clients not to share their use because she knew the rule was that the Board has to consider all of the potential uses for the property. She stated that what the applicants are planning for the property is small and rustic and would be very compatible. They have families in mind in what they are proposing.

Close public hearing/Discussion

Commissioner McGrady made the motion to close the public hearing. Board discussion followed. Commissioner McGrady made the motion that the Board deny the rezoning request. All voted in favor and the motion carried.

Adjourn

Commissioner Messer made the motion to adjourn the meeting at 6:55 p.m. All voted in favor and the motion carried.

Attest:

Elizabeth W. Corn, Clerk to the Board

William L. Moyer, Chairman

DRAFT