

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: October 15, 2008

SUBJECT: Public hearing on permanently closing of easement

ATTACHMENTS: (1) Resolution adopted September 2, 2008
(2) North Carolina General Statute 153A-241
(3) Order closing easement on said property.
(4) Map of proposed easement closure.

SUMMARY OF REQUEST: North Carolina General Statute 153A-241 requires that a public hearing be held for the permanent closing of a public road or easement. The public hearing was set September 2, 2008 for the purpose of closing easements on the properties of David M. Bayless and Ronald G. Calvert, Hendersonville, North Carolina.

BOARD ACTION REQUESTED:

Recommend approving permanent closure of easements on the said property and upon approval signing attached Order of Closure for recording with the County registrar.

Suggested Motion:

I move for the Board to approve closure of the easements and certify Orders of Closures.

HENDERSON COUNTY BOARD OF COMMISSIONERS

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RESOLUTION OF INTENTION TO CLOSE EASEMENT ON THE PROPERTY'S OF DAVID M. BAYLESS AND RONALD G. CALBERT, PARCEL INDETIFICATIONS NUMBER'S 9660216856, 9660214602 AND 9660212452

WHEREAS, North Carolina General Statute 153A-241 requires the County Board of Commissioners to adopt a resolution for the intention of closing an easement on property;

WHEREAS, The Henderson County Board of Commissioners proposed to hold a public hearing on the closing of easement on the above property owners;

NOW, THEREFORE, BE IT RESOLVED by the Henderson County Board of Commissioners, as follows:

1. The Henderson County Board of Commissioners, which is authorized to close public roads and easements, hereby makes the following declaration which is intended to constitute a Declaration of Official Intent:
 - (a) **Hold a public hearing.** The Henderson County Board of Commissions intend to hold a public hearing on the closure of easements on the property of David M. Bayless and Ronald G. Calvert, if the easement exists as shown by the red line on the attached map.
2. This resolution shall take effect immediately upon its passage.

ADOPTED THIS the 2nd day of September, 2008

HENDERSON COUNTY BOARD OF COMMISSIONERS

BY: _____

William L. Moyer, Chairman

ATTESTED BY: _____

Teresa L. Wilson
Teresa L. Wilson, Deputy Clerk to the Board

[OFFICIAL SEAL]

§ 153A-241. Closing public roads or easements.

A county may permanently close any public road or any easement within the county and not within a city, except public roads or easements for public roads under the control and supervision of the Department of Transportation. The board of commissioners shall first adopt a resolution declaring its intent to close the public road or easement and calling a public hearing on the question. The board shall cause a notice of the public hearing reasonably calculated to give full and fair disclosure of the proposed closing to be published once a week for three successive weeks before the hearing, a copy of the resolution to be sent by registered or certified mail to each owner as shown on the county tax records of property adjoining the public road or easement who did not join in the request to have the road or easement closed, and a notice of the closing and public hearing to be prominently posted in at least two places along the road or easement. At the hearing the board shall hear all interested persons who appear with respect to whether the closing would be detrimental to the public interest or to any individual property rights. If, after the hearing, the board of commissioners is satisfied that closing the public road or easement is not contrary to the public interest and (in the case of a road) that no individual owning property in the vicinity of the road or in the subdivision in which it is located would thereby be deprived of reasonable means of ingress and egress to his property, the board may adopt an order closing the road or easement. A certified copy of the order (or judgment of the court) shall be filed in the office of the register of deeds of the county.

Any person aggrieved by the closing of a public road or an easement may appeal the board of commissioners' order to the appropriate division of the General Court of Justice within 30 days after the day the order is adopted. The court shall hear the matter de novo and has jurisdiction to try the issues arising and to order the road or easement closed upon proper findings of fact by the trier of fact.

No cause of action founded upon the invalidity of a proceeding taken in closing a public road or an easement may be asserted except in an action or proceeding begun within 30 days after the day the order is adopted.

Upon the closing of a public road or an easement pursuant to this section, all right, title, and interest in the right-of-way is vested in those persons owning lots or parcels of land adjacent to the road or easement, and the title of each adjoining landowner, for the width of his abutting land, extends to the center line of the public road or easement. However, the right, title or interest vested in an adjoining landowner by this paragraph remains subject to any public utility use or facility located on, over, or under the road or easement immediately before its closing, until the landowner or any successor thereto pays to the utility involved the reasonable cost of removing and relocating the facility. (1949, c. 1208, ss. 1-3; 1957, c. 65, s. 11; 1965, cc. 665, 801; 1971, c. 595; 1973, c. 507, s. 5; c. 822, s. 1; 1977, c. 464, s. 34; 1995, c. 374, s. 1.)

**AN ORDER CLOSING ALL EASEMENTS ON THE PROPERTIES OF
DAVID M. BAYLESS AND RONALD G. CALVERT PARCEL
IDENTIFICATION NUMBERS 9660216856, AND 9660212452**

WHEREAS, the Henderson County Board of Commissioners on September 2, 2008 adopted a resolution of intent to consider closing the easements located on the properties of David M. Bayless and Ronald G. Calvert, parcel identification numbers 9660216856, and 9660212452 and a public hearing thereon was held October 15, 2008; and

WHEREAS, the closing of easements on the properties of David M. Bayless and Ronald G. Calvert would not be contrary to the public interest; and no individual owning property in the vicinity of the easements would be deprived of reasonable means of egress to his or her property by the closing of said easements.

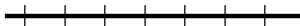
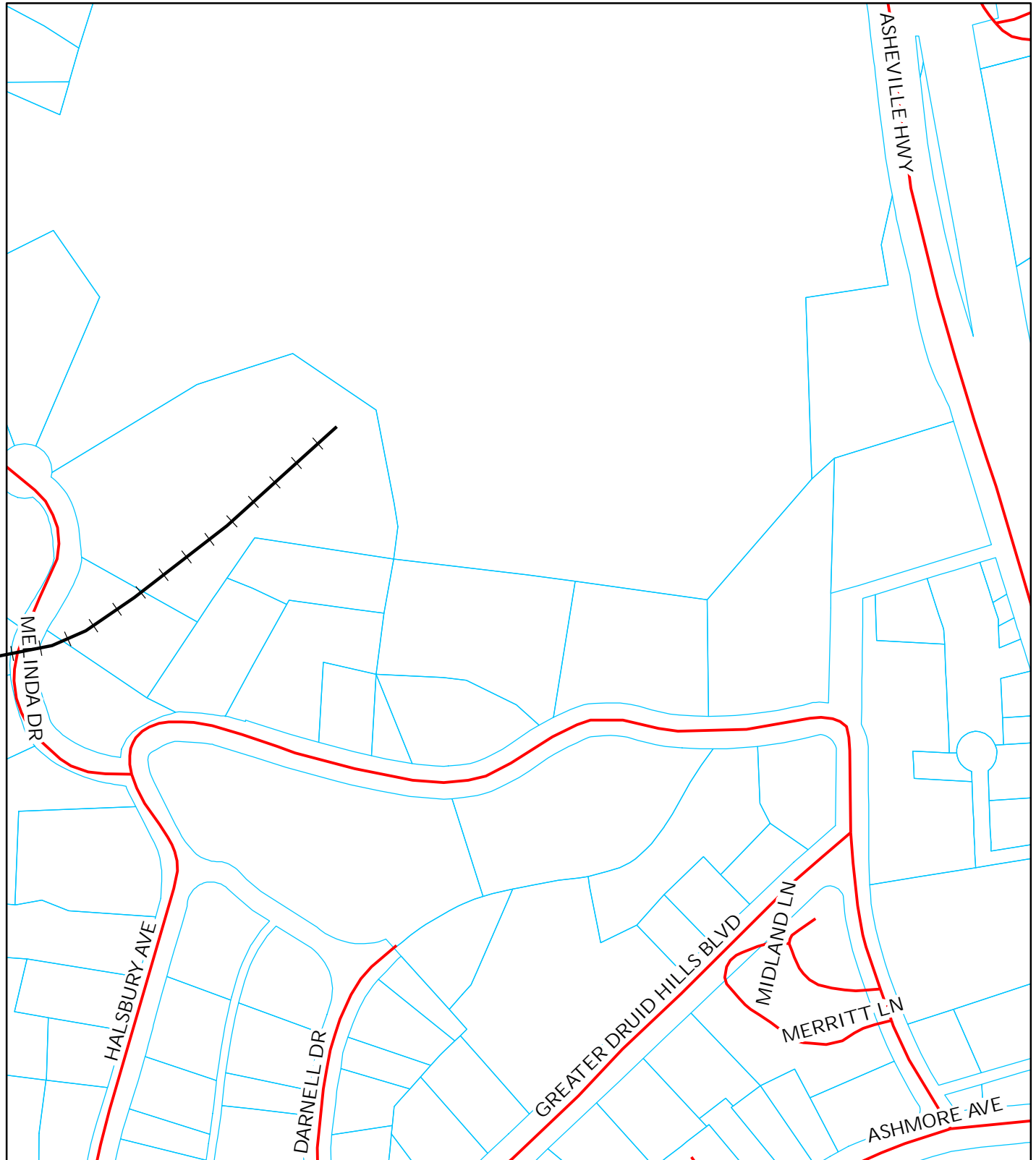
NOW, THEREFORE BE IT RESOLVED by the Henderson County Board of Commissioners hereby adopts this order pursuant to North Carolina G.S. 153A-241, permanently closing the easements located on the properties of David M. Bayless and Ronald G. Calvert, which shall be shown on a plat to be provided by the party requesting the easement closure.

BE IT FURTHER RESOLVED that said plat shall be recorded by the requesting party, with the Henderson County registrar, upon approval by the County.

This the _____ day of _____ 2008.

EASEMENT CLOSURE MAP

David M. Bayless and Ronald Calvert Properties



Approximate location of easement to be closed