

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: Monday, October 5, 2009

SUBJECT: Public Hearing for Rezoning Application #R-2009-02

ATTACHMENTS:

1. Staff Report
2. Aerial Photo Map
3. Subject Area Photos
4. Residential Two Rural (R2R) District Text
5. Industrial (I) District Text
6. Excerpt of Planning Board Minutes from August 20, 2009
7. Notice of Public Hearing
8. Certification of Notification of Public Hearing
9. Power Point Slides

SUMMARY OF REQUEST:

Rezoning Application #R-2009-02, which was submitted on August 10, 2009 requests the County rezone 8.26 acres of an existing 67 acre tract. Staff has modified the application to expand the subject area to include a total of 23 acres located on McMurray Rd in order to avoid split zoning on a single tract. The applicant requests a rezoning from a Residential Two Rural (R2R) to Industrial (I) zoning district. The subject area is owned by William McKay Trust and Mr. James Diaz is the applicant's agent.

The Henderson County Planning Board considered rezoning application #R-2009-02 at its regularly scheduled meeting on August 20, 2009. During that meeting, the Planning Board voted unanimously to send forward a favorable recommendation on rezoning application #R-2009-02 to rezone the Subject Area from a Residential Two Rural (R2R) to Industrial (I) zoning district.

PUBLIC NOTICE:

Before taking action on the application, the Board of Commissioners must hold a public hearing. In accordance with §200A-314(C) and §200A-337(B) of the Henderson County Land Development Code and State Law, notices of the October 5, 2009, public hearing regarding rezoning application #R-2009-02 were published in the Hendersonville Times-News on September 16, 2009 and September 23, 2009. The Planning Department sent notices of the hearing via first class mail to the owners of properties adjacent to the Subject Area and the Applicants and posted signs advertising the hearing on the Subject Area on September 18, 2009. Attachment 7 includes a certification to this effect.

BOARD ACTION REQUESTED:

Planning Staff recommends that the Board of Commissioners approve the application to rezone the Subject Area from a Residential Two Rural (R2R) zoning district to an Industrial (I) zoning district.

Suggested Motion:

I move the Board recommend approval of rezoning application #R-2009-02 to rezone the Subject Area from Residential Two Rural (R2R) zoning district to an Industrial (I) zoning district based on the recommendations of the Henderson County 2020 Comprehensive Plan.

Henderson County Planning Department Staff Report

Rezoning Application #R-2009-02

William McKay Trust Owner

James Diaz, Applicant

1. Rezoning Request

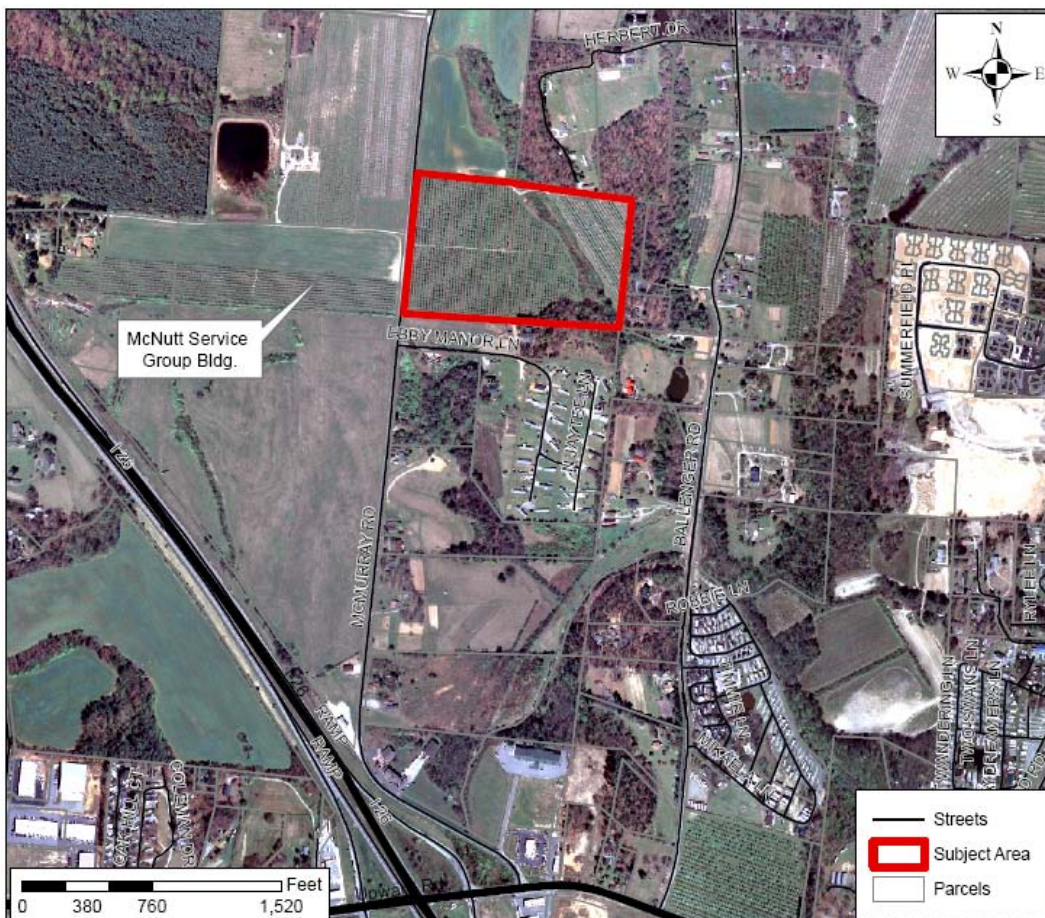
1.1. **Applicant:** James Diaz, Agent

1.2. **Property Owner:** William McKay Trust

1.3. **Request:** Rezone a portion of the William McKay Trust property from an R2-R zoning district to an Industrial zoning district.

1.4. **Subject Area** (See Map A)

Map A: Map of Subject Area



1.5. **PIN:** 9588-35-3238

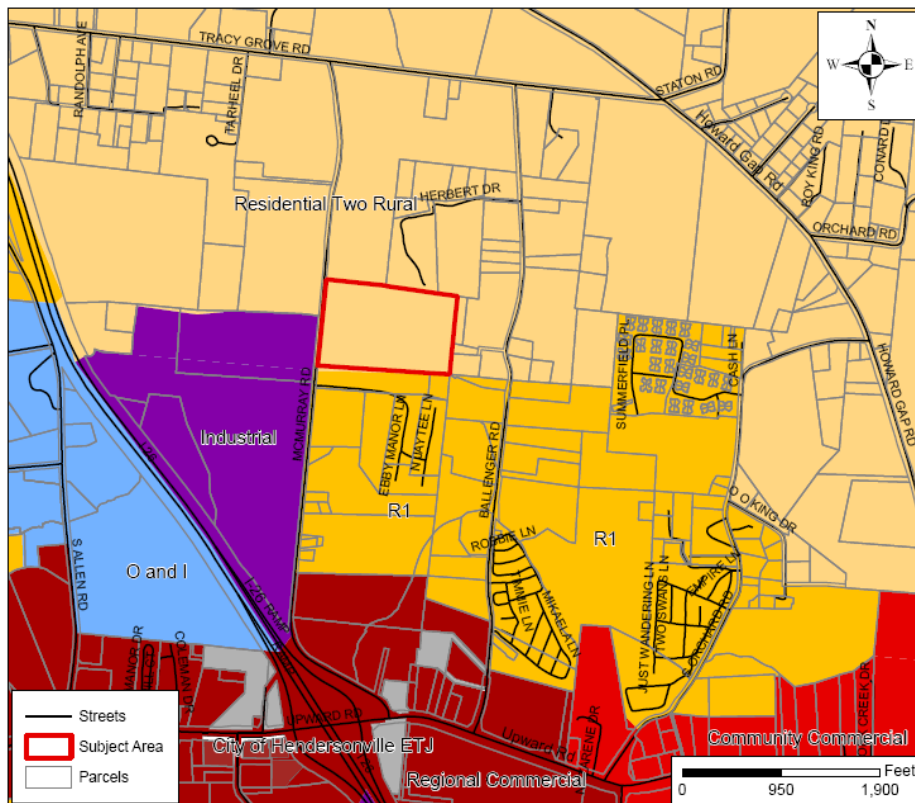
1.6. **Size:** The application requests the County rezone 8.26 acres of an existing 67 acre tract. Staff has modified the application to expand the subject area to include a total of 23 acres located on McMurray Rd to avoid split zoning on a single tract.

1.7. **Location:** The Subject Area is located along McMurray Rd (SR 1790), approximately 1,000 feet from the intersection of McMurray Rd (SR 1790) and Tracy Grove Rd (SR 1793). And 2,000 feet from the intersection of McMurray Rd (SR 1793) and Upward Rd (SR 1783)

2. Current Zoning

2.1. **Application of Current Zoning:** The subject area was zoned R2-R on September 19, 2007 with the adoption of the Land Development Code.

Map B: Current Zoning



2.2. **Adjacent Zoning:** The Subject Area is adjacent to R1 zoning to the south. Land adjacent to the Subject Area to the west is zoned Industrial. The remaining land adjacent to the Subject Area to the north and east is zoned R2-R.

2.3. District Comparison:

R2-R (Residential Two Rural): *“The purpose of Residential District Two Rural (R2R) 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, with the inclusion of manufactured housing, consistent with the recommendations of the Comprehensive Plan. This general use district is typically meant to be utilized in areas designated as transitional in the Comprehensive Plan”* (Chapter 200A, Land Development Code §200A-29). R2R requires 10 foot side and rear setbacks, a maximum building height of 40 feet, and a standard density of one (1) unit per acre (maximum density of 2 units per acre).

2.3.1. **I (Industrial District):** *“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 lands uses; and (3) is sensitive to its impact on surrounding land uses and the environment (natural and man-made)”* (Chapter 200A, Land Development Code §200A-36). The Industrial District requires 20 foot side and rear setbacks, a maximum building height of 72 feet for principal structures, maximum impervious surface of 80%, and an unlimited maximum floor area.

3. Current Uses of Subject Area and Adjacent Properties

3.1. **Subject Area Uses:** The Subject Area is currently an apple orchard.

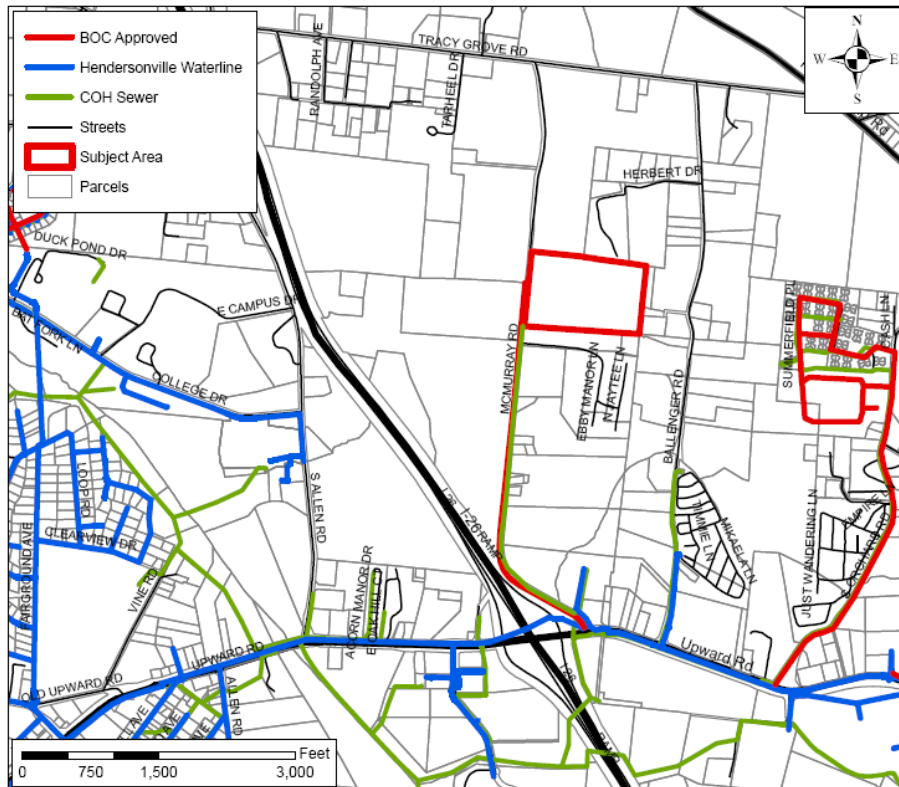
3.2. **Adjacent Area Uses:** The surrounding properties are primarily agricultural with some single family residential homes. Where McMurray Road (SR 1790) intersects with Upward Road (SR 1783), there are commercial uses including the Wafflehouse, Mountain Inn and Suites, Bloomfields Dishes and More, and McAbee’s Fruit Stand.

4. Water and Sewer

4.1. **Public Water:** The nearest water line is a BOC approved line that abuts the subject area along McMurray Rd. (SR 1790) (See Map C).

4.2. **Public Sewer:** Public sewer is not currently located on the Subject Area. The nearest sewer line is approximately 2,000 feet southeast of the Subject Area on Ballenger Rd or 3,650 to the south on McMurray Rd. (See Map C).

Map C: Water and Sewer Map



5. Transportation and Access

5.1. **Frontage:** The Subject Area has approximately 825 feet of road frontage along McMurray Road (SR 1790)

5.2. **Transportation:** Table 1, below, provides Annual Average Daily Traffic Counts for McMurray Road.

Table 1. Annual Average Daily Traffic Count	
Road	2000*
McMurray Road (SR 1790)	750

* No traffic counts available since 2000

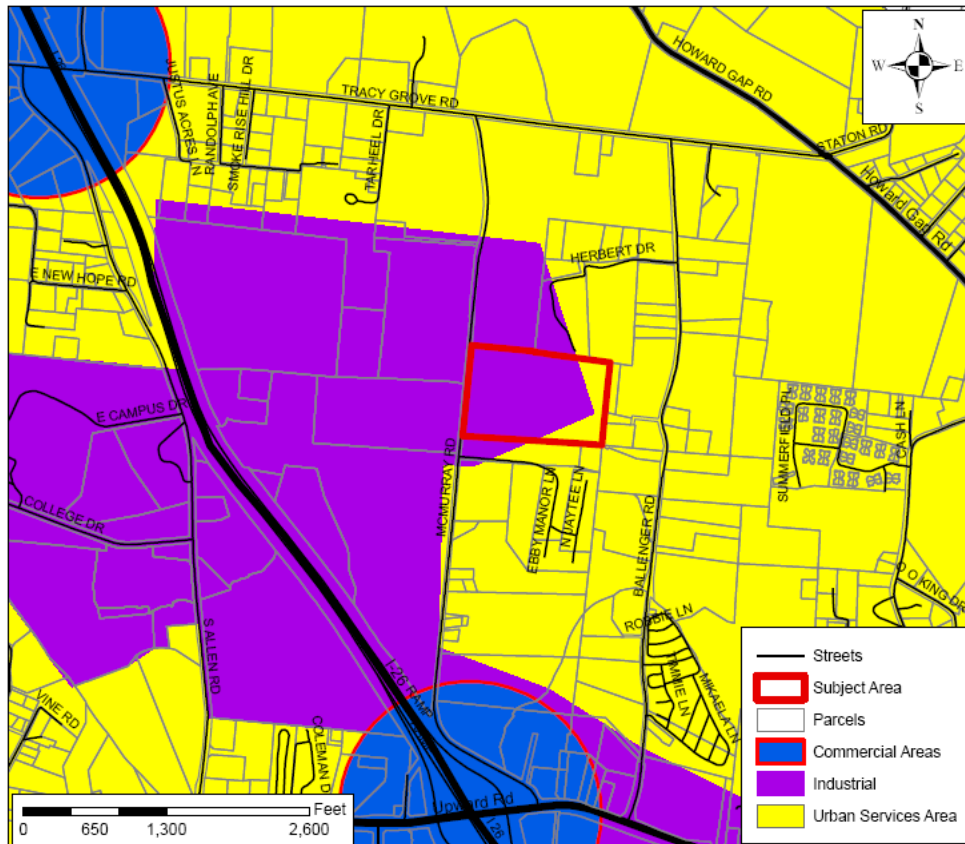
5.3. **The NCDOT Draft 2009-2015 State Transportation Improvement Program (STIP):** The Transportation Improvement Program, within the vicinity of the Subject Area, includes the widening and improvement of Upward Road (SR

1783) from Spartanburg Highway (US 176) to Howard Gap Road (SR 1006), project number R-4430. No improvements are scheduled for McMurray Road (SR 1790).

6. The Henderson County 2020 Comprehensive Plan (CCP)

- 6.1. **Urban Services Area:** The CCP Future Land Use Map identifies the Subject Area as being located in the Industrial Area and Urban Services Area (USA)(2020 CCP, Pgs. 128, 129 & Appendix 1, Map 24) (See Map D).
 - 6.1.1. The CCP states that, “the County’s economic development activities should be pursued within USA” (2020 CCP, Pg. 129).
 - 6.1.2. The CCP also states that, “the USA is that area within which most urban services and urban-scale development is currently concentrated, and within which such development should generally be concentrated through the year 2020” (CCP, Pg. 128).
 - 6.1.3. 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” (2020 CCP, Pg. 129).
 - 6.1.4. The CCP states that, “Industrial development will exist within predefined zoning districts whose standards and configuration are in keeping with the surrounding community” (2020 CCP, Pg. 129).
- 6.2. **Industrial:** The CCP Future Land Use Map identifies the Subject Area as being located in an Industrial Area, a special designation within the urban services area (2020 CCP Pgs. Pgs. 136, 137 & Appendix 1, Map 24).
 - 6.2.1. The CCP states that, “most defined industrial areas should lie within the Urban Services Area, and in other areas on a very limited basis. Most industrial uses should be segregated from other uses with the exception of Regional Commercial uses” (2020 CCP, Pg. 136).

Map D: 2020 County Comprehensive Plan Future Land Use Map



7. Staff Comments

Staff’s position at this time, under the guidelines of current plans, policies and studies, is it supports the rezoning of the property to an Industrial (I) zoning district. This based on the following:

7.1. **The 2020 CCP:** The CCP Future Land Use Map (See Map D) places the subject area in the “Urban Services Area” classification. The text and map of the 2020 CCP suggest that the Subject Area would be suitable for high-density residential, commercial or industrial development. The CCP also indicates that Industrial may be suitable for the area as the Subject Area falls within the specially designated industrial area in the USA.

7.2. **Adjacent Zoning:** The Subject Area directly abuts an existing Industrial (I) zoning district to the west. If the Subject Area were to be rezoned to Industrial this property would be apart of a contiguous Industrial zoning district.

7.3. **Comparison of Districts:** Applying Industrial (I) will allow for industrial and heavy commercial uses. Residential uses will not be allowed.

8. **Staff Recommendations**

8.1. When reviewing rezoning requests Staff attempts to identify plans or policies, changes in existing conditions, undue hardship to the Applicant, or overriding community interest to justify supporting the proposed rezoning. Staff's position at this time, under the guidelines of current plans, policies and studies, is it supports the rezoning of the Subject Area to Industrial (I) consistent with the recommendations of the Henderson County 2020 Comprehensive Plan.

8.1.1. It is generally incumbent upon the Applicant to demonstrate an overriding justification for approving a given rezoning application. Staff encourages the Applicant to present any information that would inform the County's consideration of the proposed rezoning. Staff requests the Applicant not discuss any specific use being considered for the property. The Technical Review Committee, Planning Board, and the Board of Commissioners cannot consider any specific proposed use for the property and must only consider the range of possible uses when reviewing and making recommendations on the rezoning request.

9. **Technical Review Committee Recommendations**

9.1. The Henderson County Technical Review Committee considered rezoning application #R-2009-02 at a special called meeting on August 20, 2009. During that meeting, the Technical Review Committee voted unanimously to send forward a favorable recommendation on rezoning application #R-2009-02 to rezone the Subject Area from a Residential Two Rural (R2-R) zoning district to an Industrial (I) zoning district.

10. **Planning Board Recommendations**

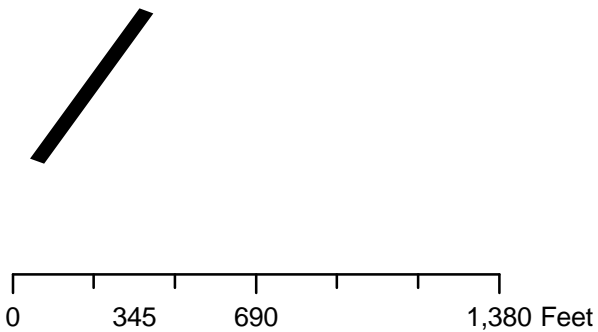
10.1. The Henderson County Planning Board considered rezoning application #R-2009-02 at its regularly scheduled meeting on August 20, 2009. During that meeting, the Planning Board voted unanimously to send forward a favorable recommendation on rezoning application #R-2009-02 to rezone the Subject Area from a Residential Two Rural (R2-R) zoning district to an Industrial (I) zoning district.



Legend

- Streets
- Subject Area
- Parcels

Rezoning Application
R-2009-02
William McKay Trust, owner





View of McMurray Rd and subject area looking North East.



View subject area looking east.



View subject area looking east.



View of McMurray Rd and subject area looking South East.

§200A-29. Residential District Two Rural (R2R)

- A. **Purpose.** The purpose of Residential District Two Rural (R2R) 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* and rural commercial and light industrial development consistent with the recommendations of the *Comprehensive Plan*. This general *use district* is typically meant to be utilized in areas designated as Transitional (RTA) in the *Comprehensive Plan*.
- B. **Density and Dimensional Requirements.** Each *use* allowed in this district shall, at a minimum, conform to the following requirements (in the case of a nonresidential *use* the *residential density* requirements shall not apply). In some cases a specific *use* may be required to meet the Supplemental Requirements as set forth in §200A-63 (Supplemental Requirements).

Table 2.3. R2R Density and Dimensional Requirements			
(1) <i>Residential Density</i> (units/acre)	(2) Standard	1	
	(3) Maximum	2	
(4) <i>Yard Setbacks</i> (feet)	<i>Front or ROW</i>	<i>Local</i>	15
		<i>Collector</i>	20
		<i>Thoroughfare</i>	35
		<i>Boulevard</i>	50
		<i>Expressway</i>	60
		<i>Freeway</i>	90
		<i>Side</i>	10
		<i>Rear</i>	10
(5) Maximum Height (feet)		40	

- (1) *Residential density* shall be calculated utilizing the entire acreage of a *tract* of land. Under this scenario, *residential density* shall be determined based on the following formula:

$$\text{Lot size} \times \text{allowable units per acre} = \text{permitted dwelling units}$$

The following example assumes a 5 acre tract with an allowable density of 1 unit/acre:

$$5 \text{ acres} \times 1 \text{ unit per acre} = \underline{\mathbf{5 \text{ permitted dwelling units}}}$$

The maximum *residential density* for portions of the *tract* with a *slope* of 60 percent or greater (where such *slope* areas of the *tract* account for ten (10) percent or more of the *tract*) shall be one-half (½) the eligible density.

- (2) Standard *residential density* shall be applied:
- a. On a *lot* existing at the time of the initial adoption of this Chapter, where there is not adequate area to comply with the applicable standard *residential density* requirement;
 - b. To single-family residential *uses*; and
 - c. To multifamily residential *uses* with fewer than five (5) units.

- (3) Maximum residential density shall be available to applicants proposing five (5) or more dwellings in any combination of the following unit types (duplexes and triplexes and specifically excluding single-family units) where:
 - a. A total of at least five (5) units would be permitted by standard residential density, and
 - b. Such dwellings are generally served by both: (1) a *public water supply system* and (2) a *sewage disposal system* (of the following types: municipal, approved public, or approved community) which meet the requirements of the local or State authorities having jurisdiction thereof..
- (4) *Accessory structures* shall be located in *side* or *rear yards* and shall be *setback* a minimum of ten (10) feet from any property line.
- (5) Maximum height may be exceeded in multifamily developments as detailed in §200A-63 (Supplemental Requirements) SR 1.6. (Dwelling, Multifamily, Five (5) or More Units), provided such developments do not exceed 50 feet in height.

§200A-36. Industrial District (I)

- A. **Purpose.** 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).
- B. **Density and Dimensional Requirements.** Each *use* allowed in this district shall at a minimum conform to the following requirements. In some cases a specific *use* may be required to meet the Supplemental Requirements as set forth in §200A-63 (Supplemental Requirements).

Table 2.10. I Density and Dimensional Requirements			
<i>Maximum Impervious Surface (%)</i>		80	
<i>Maximum Floor Area (sq ft)</i>		Unlimited	
<i>Yard Setbacks (feet)</i>	<i>Front or ROW</i>	<i>Local</i>	20
		<i>Collector</i>	30
		<i>Thoroughfare</i>	40
		<i>Boulevard</i>	50
		<i>Expressway</i>	50
		<i>Freeway</i>	60
	<i>Side</i>	20	
	<i>Rear</i>	20	
<i>Maximum Height (feet)</i>		72	

**EXCERPT FROM THE HENDERSON COUNTY PLANNING BOARD MINUTES
August 20, 2009**

Rezoning Application # R-2009-02 – Request to Rezone Approximately 8.26 Acres of Land Located on McMurray Road (Staff Modified Subject Area to Include a Total of 23 Acres) – From a Residential Two Rural (R2R) to Industrial (I) Zoning District – James Diaz, Agent for William McKay Trust, Owner. Presentation by Parker Sloan, Planner.

Mr. Sloan stated that the County received a request to rezone 8.26 acres of an existing 67 acre tract, but Staff modified the application to expand the subject area to include a total of 23 acres located on McMurray Road in order to avoid split zoning on a single tract. He said the applicant requests a rezoning from a Residential Two Rural (R2R) to Industrial (I) zoning district and is owned by William McKay Trust with Mr. James Diaz as the agent. Mr. Sloan stated that the subject area is adjacent to R1 zoning to the south, Industrial zoning to the west and the remaining land to the north and east is zoned R2R. He said currently the property is an apple orchard and primarily the surrounding properties are agricultural with some single-family residential homes. Where McMurray Road intersects with Upward Road, there are commercial uses including the Waffle House, Mountain Inn and Suites, Bloomfield's Dish Barn and McAbee's Fruit Stand. Mr. Sloan noted a correction to the Staff report noting that the public sewer is extended up McMurray Road to the Subject Area for a different project as well as public water abuts the subject area along McMurray Road.

Mr. Sloan stated that Staff supports the rezoning of the property to an Industrial zoning district based on the 2020 CCP and the fact that the subject area abuts an existing Industrial zoning district to the west, which, if the subject property were to be rezoned, would be a part of a contiguous Industrial zoning district. He added that applying Industrial zoning will allow for industrial and heavy commercial uses and not allow for residential uses.

Ms. Kumor stated that because the CCP indicates that Industrial is suitable for the area and the subject area falls within the specially designated industrial area in the Urban Services Area classification, she made a motion that the Board recommend approval of rezoning application # R-2009-02 to rezone the subject area from Residential Two Rural (R2R) zoning district to an Industrial (I) zoning district based on the recommendations of the Henderson County 2020 Comprehensive Plan. Mike Cooper seconded the motion and all members voted in favor.

**NOTICE OF PUBLIC HEARING
ON PROPOSED ZONING MAP AMENDMENT
(Rezoning Requests #R-2009-01 and #R-2009-02)**

The Henderson County Board of Commissioners will hold a public hearing on two requests for proposed map amendments to the Official Zoning Map of Henderson County, North Carolina.

Rezoning Application #R-2009-01, would rezone approximately 4.23 acres of land, located near the intersection of Rutledge Drive and Erkwood Drive, from the City of Hendersonville's relinquished ETJ to a Residential One (R1) zoning district. The Subject Area is composed of three (3) parcels (PINs: 9567-98-6403, 9577-08-0254, 9577-08-0022). The subject area owner is Mud Creek Baptist Church, INC.

Rezoning Application #R-2009-02, would rezone approximately 23 acres of a 67 acre tract, located off McMurray Road (SR 1790), from an R2MH (Residential Two with Manufactured Housing) zoning district to an I (Industrial) zoning district. The subject area (PIN: 9588-35-3238) is owned by William McKay Trust.

The public hearing will be held on Monday, October 5, 2009, at 7:00 P.M., in the Board of Commissioners Meeting Room located in the Henderson County Historic Courthouse, at 1 Historic Courthouse Square, in Hendersonville, NC. The public is invited to attend and comment on the proposed amendment.

Written comments addressed to the Henderson County Board of Commissioners, 1 Historic Courthouse Square, Suite 1, Hendersonville, NC 28792, will be accepted prior to the hearing. Information about the proposed amendment is available for review in the Henderson County Planning Department, 213 1st Avenue East, Hendersonville, NC, between the hours of 8:00 A.M. and 4:30 P.M., Monday through Friday, or on the Henderson County Website at www.hcplanning.org. For more information, call the Planning Department at (828) 697-4819 [TDD for the hearing impaired (828) 697-4580].

Please note that after considering public hearing comments, the Board of Commissioners may discuss other options or make changes to the proposed amendments before taking final action. The Henderson County 2020 Comprehensive Plan will be updated and amended, as necessary, to reflect the action of the Board of Commissioners.

Terry Wilson
Clerk to the Board

Henderson County Board of Commissioners

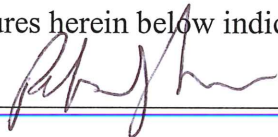
For publication in the Times News on September, September 16, 2009 and Wednesday, September 23, 2009.

Certification of Notice of Public Hearing

In accordance with NCGS 153A-343 the Planning Department certifies notices of the October 5, 2009 hearing regarding Rezoning Application #R-2009-01 and Rezoning Application #R-2009-02 were:

1. Submitted to the Hendersonville Times-News on September 9, 2009 to be published on September 16, 2009 and September 23, 2009 by Parker Sloan;
2. Sent, via first class mail, to the owners of properties adjacent to the Subject Area on September 18, 2009 by Parker Sloan;
3. Sent, via first class mail, to the property owners on September 18, 2009 by Parker Sloan; and
4. Posted on the Subject Area on September 18, 2009 by Parker Sloan.

The signatures herein below indicate that such notices were made as indicated herein above:

1. 
2. _____

STATE OF NORTH CAROLINA

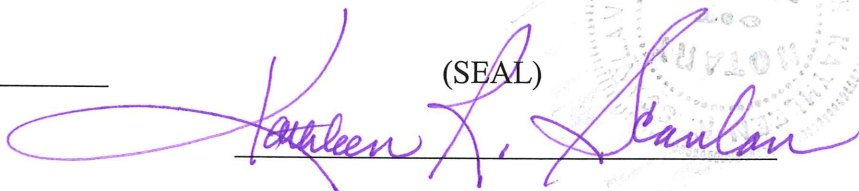
COUNTY OF HENDERSON

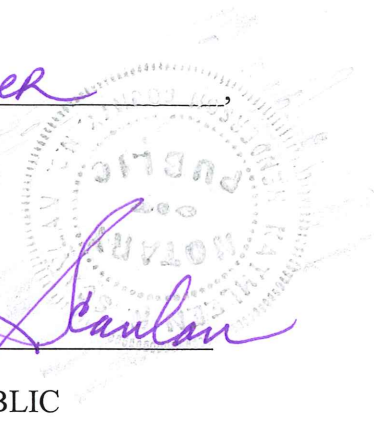
I, KATHLEEN R. SCANLAN, a Notary Public, in and for the above County and State, do hereby certify that PARKER SLOAN,
_____, and _____

personally appeared before me this day and acknowledged the due execution by
PARKER SLOAN of the foregoing instrument.

WITNESS my hand and notarial seal, this the 21 day of September,
2009.

My commission expires:
10-24-2010


(SEAL)
NOTARY PUBLIC



Rezoning #R-2009-02 (R2-R to I)
William McKay Trust, Owner

