

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: April 4, 2011

SUBJECT: An Overview of the Conditional Zoning Process and a Preview of Application #R-2010-03-C

PRESENTER: Anthony Starr, AICP, County Planning Director

ATTACHMENTS:

1. Excerpt from LDC – Subpart B. Conditional Zoning Districts
2. #R-2010-03-C Area Map
3. #R-2010-03-C Site Plan
4. PowerPoint

SUMMARY OF REQUEST:

Billy Corn, owner of subject parcel, submitted rezoning application #R-2010-03-C for the County to rezone approximately 2.42 acres of land, located off of Howard Gap Road (US 176), from an R1 (Residential One) zoning district to an I-CD (Industrial Conditional District).

Conditional zoning districts are different from traditional zoning districts because they require a site plan for the proposed use(s) of the property and certain conditions or restrictions are placed on the property based on the proposed or allowable use(s). Conditional zoning district decisions are a legislative process subject to the same procedures as traditional zoning map amendments (rezoning).

The Henderson County Planning Board considered rezoning application #R-2010-03-C at its regularly scheduled meeting on February 17, 2011. During that meeting, the Planning Board voted 5-2 to send the Board of Commissioners a favorable recommendation on rezoning application #R-2010-03-C to zone the Subject Area to an I-CD (Industrial Conditional District).

Before taking action on the rezoning application, the Board of Commissioners must hold a public hearing. Staff proposes that the public hearing be scheduled for May 2, 2011, at 5:30 P.M. Staff will provide the Board with brief overview of conditional zoning districts and a preview of the rezoning application.

BOARD ACTION REQUESTED:

Planning Staff recommends that the Board of Commissioners schedule the public hearing for rezoning application #R-2010-03-C and for Monday, May 2, 2011, at 5:30 P.M., or schedule a special called meeting on or after that date.

Suggested Motion:

I move that the Board schedule a public hearing for Rezoning Application #R-2010-03-C for Monday, May 2, 2011, at 5:30 P.M.

Subpart B. Conditional Zoning Districts

§200A-1. Conditional Zoning Districts Established

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.

Conditional Zoning Districts are zoning districts in which the development and *use* of the property is subject to predetermined Chapter standards and the rules, regulations, and conditions imposed as part of the legislative decision creating the district and applying it to each individual development project. For each General Use Zoning District, there is a corresponding Conditional Zoning District (CD) which corresponds to each of the districts authorized by this Chapter as follows: R1-CD; R2-CD; R2R-CD; R3-CD; R4-CD; OI-CD; LC-CD; CC-CD; RC-CD; I-CD; R-40-CD; WR-CD; SR-CD; and MU-CD.

Certain types of zoning districts would be inappropriate at certain locations in the absence of special conditions. Some land *uses* are of a nature or scale that may have significant impacts on both the immediately surrounding area and the entire community, which cannot be predetermined or controlled by general district standards. There are also circumstances in which a general use district designation allowing such a *use* by right would not be appropriate for a particular property though the *use* could, if properly planned, be appropriate for the property consistent with the objectives of these regulations, the adopted *Comprehensive Plan*, and adopted district. The review process established in this section provides for the accommodation of such *uses* by a reclassification of property into a conditional zoning district, subject to specific conditions, which ensure compatibility of the *use* with the use and enjoyment of neighboring properties.

Where the *applicant* for rezoning desires property to be rezoned to such a district in such situations, the Conditional Zoning District is a means by which such special conditions can be imposed in the furtherance of the purpose of this Chapter and the recommendations of the *Comprehensive Plan*. The Conditional Zoning District classification will be considered for rezoning only with the consent of the property *owner*. If, for any reason, any condition imposed pursuant to these regulations is found to be illegal or invalid or if the *applicant* should fail to accept any condition, it is the intent of this Chapter that the authorization of such Conditional Zoning District shall be null and void and of no effect and that proceedings shall be instituted to rezone the property to its previous zoning classification.

§200A-2. Plans and Other Information to Accompany Petition

Property may be rezoned to a Conditional Zoning District only in response to, and consistent with, a petition submitted by the *owners* of all of the property to be included in the district. A petition for conditional zoning must include a *site plan*, drawn to scale, and supporting information and text that specifies the actual *use* or *uses* intended for the property and any rules, regulations and conditions that, in addition to all predetermined requirements, will govern the development and *use* of the property.

§200A-3. Approval of Conditional Zoning District

Conditional Zoning District decisions are a legislative process subject to judicial review using the same procedures and standard of review as applicable to general *use district* zoning decisions. Conditional Zoning District decisions shall be made in consideration of identified relevant adopted land *use* plans for the area, including, but not limited to, the *Comprehensive Plan*, strategic plans, district plans, *community plans*, *neighborhood plans*, corridor plans, and other land-use policy documents.

§200A-4. Conditions to Approval of Petition

In approving a petition for the reclassification of property to a Conditional Zoning District, the Planning Board may recommend, and the Board of Commissioners may request that reasonable and appropriate conditions be attached to the approval of the petition. Conditions and site-specific standards shall be limited to those that address the conformance of the development and *use* of the site to County ordinances and any officially adopted *Comprehensive Plan* or other land *use* plan, that address the impacts reasonably expected to be generated by the development or *use* of the site. Any such conditions should relate to the impact of the proposed *use* on surrounding property, support facilities (such as parking areas and *driveways*), pedestrian and vehicular circulation systems, *screening* and buffering areas, timing of development, *road* and *right-of-way* improvements, water and sewer improvements, *stormwater* drainage, provision of *open space*, and other matters that the Commissioners may find appropriate or the *applicant* may propose. Such conditions to approval of the petition may include dedication to the County, State or other public entity, as appropriate, of any *rights-of-way* or *easements* for *roads*, water, sewer, or other public utilities necessary to serve the proposed development. The *applicant* shall have a reasonable opportunity to consider and respond to any such conditions prior to final action by the Board of Commissioners. Only those conditions mutually approved by the Board of Commissioners and the *applicant* may be incorporated into the petition.

§200A-5. Effect of Approval

If a petition for conditional zoning is approved, the development and *use* of the property shall be governed by the existing Chapter requirements applicable to the district's category, the approved *site plan* for the district, and any additional approved rules, regulations, and conditions, all of which shall constitute zoning regulations for the approved district and are binding on the property as an amendment to these regulations and to the Official Zoning Map.

Only those *uses* and *structures* indicated in the approved petition and *site plan* shall be allowed on the subject property. A change of location of the *structures* may be authorized pursuant to §200A-50 (Alterations to Approval). Changes to the *site plan* layout shall not increase the number of *structures*.

Following the approval of the petition for a Conditional Zoning District, the subject property shall be identified on the Official Zoning Map by the appropriate district designation. A conditional zoning shall be identified by the same designation as the underlying general district followed by the letters "CD" (for example "OI-CD").

§200A-6. Alterations to Approval

Except as provided herein, changes to an approved petition or to the conditions attached to the approved petition shall be treated the same as amendments to these regulations or to the Official Zoning Map and shall be processed in accordance with the procedures of this Chapter.

The *Planning Director* or designee shall have the delegated authority to approve an amendment to an approved *site plan*. The standard for approving or denying such an amendment shall be that the change does not significantly alter the *site plan* or its conditions and that the change does not have a significant impact upon abutting properties. Any decision must be in writing stating the grounds for approval or denial.

For *nonresidential development*, an increase in the intensity of the development is limited to ten (10) percent of the approved *structure* size or 1,000 square feet, whichever is less. For *residential development*, increases in density are limited to ten (10) percent of the development or no more than five (5) *dwelling units*, whichever is less.

The *Planning Director*, however, shall have the discretion to decline to exercise the delegated authority either because of uncertainty about approval of the change pursuant to the standard or because Board of Commissioner consideration and public hearing is deemed appropriate under the circumstances. If the *Planning Director* declines to exercise this authority, the *applicant* may request a map amendment as permitted by this Chapter.

§200A-7. Review of Approval of a Conditional Zoning District

It is intended that property shall be reclassified to a Conditional Zoning District only in the event of firm plans to develop the property. Therefore, no sooner than three (3) years after the date of approval of the petition, the Planning Board may examine the progress made toward developing the property in accordance with the approved petition and any conditions attached to the approval. If the Planning Board determines that progress has not been made in accordance with the approved petition and conditions, the Planning Board shall forward to the Board of Commissioners a report, which may recommend that the property be classified to another district.



Vulcan Mine

Howard Gap RD

HOWARD GAP RD

Approximate Location of Gravel Impound Lot





Pop Corn Drive

POP CORN DR



0 100 200 400 Feet

Legend

-  Portion to be Rezoned
-  Total Project Parcel
-  Parcels
-  Streets

Rezoning Application
#R-2010-03-C
Billy Corn, owner

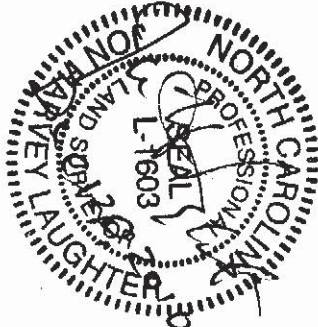
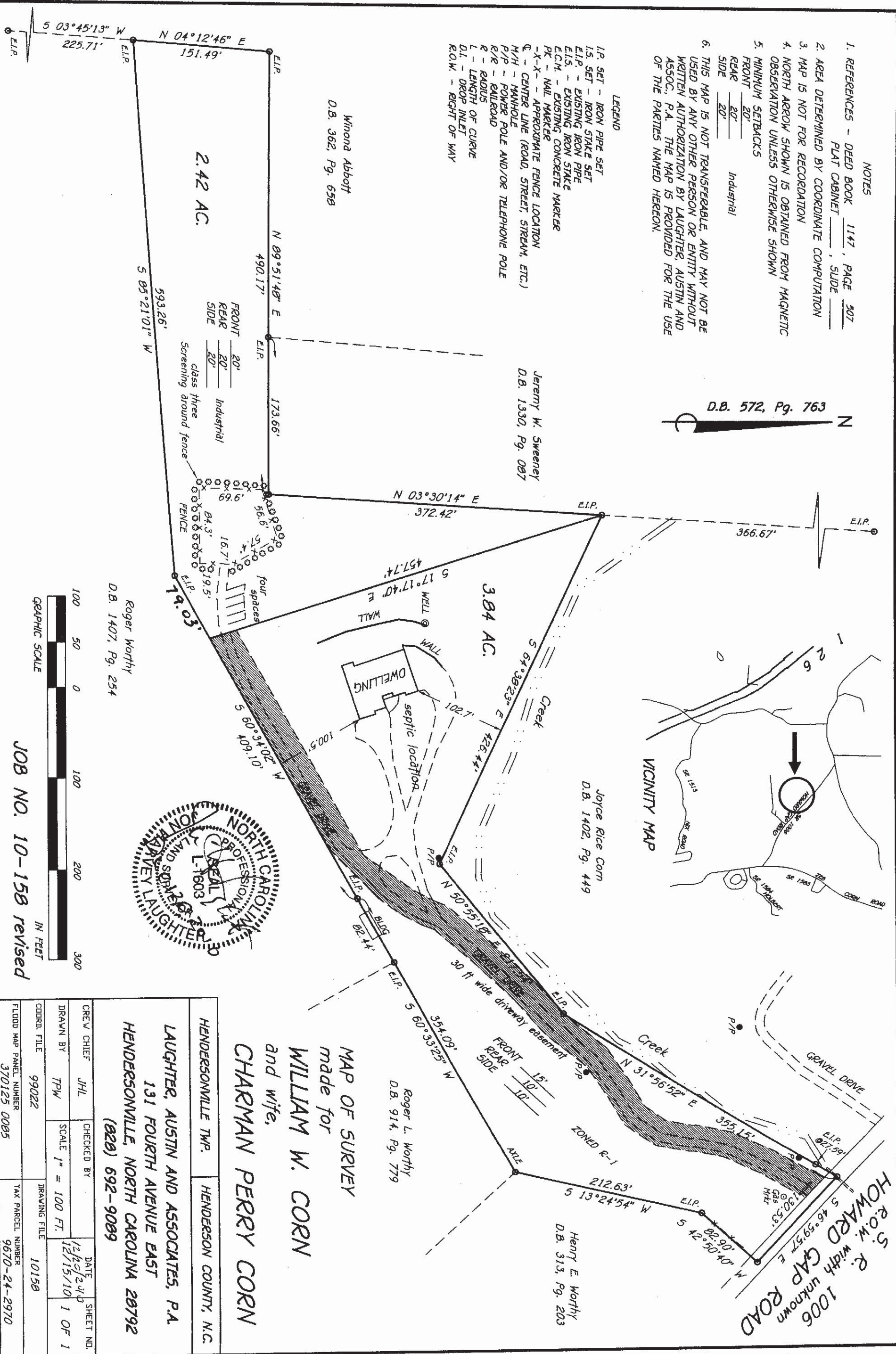
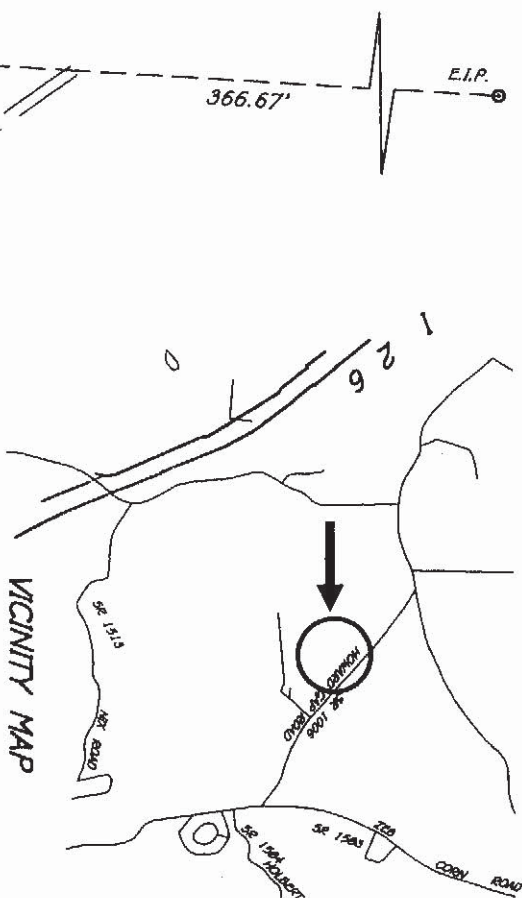
NOTES

1. REFERENCES - DEED BOOK 1147, PAGE 507
PLAT CABINET _____, SLIDE _____
2. AREA DETERMINED BY COORDINATE COMPUTATION
3. MAP IS NOT FOR RECORDATION
4. NORTH ARROW SHOWN IS OBTAINED FROM MAGNETIC OBSERVATION UNLESS OTHERWISE SHOWN
5. MINIMUM SETBACKS
FRONT 20'
REAR 20'
SIDE 20' Industrial
6. THIS MAP IS NOT TRANSFERABLE, AND MAY NOT BE USED BY ANY OTHER PERSON OR ENTITY WITHOUT WRITTEN AUTHORIZATION BY LAUGHTER, AUSTIN AND ASSOC., P.A. THE MAP IS PROVIDED FOR THE USE OF THE PARTIES NAMED HEREON.

LEGEND

- I.P. SET - IRON PIPE SET
- I.S. SET - IRON STAKE SET
- E.I.P. - EXISTING IRON PIPE
- E.I.S. - EXISTING IRON STAKE
- E.C.M. - EXISTING CONCRETE MARKER
- P.K. - NAIL MARKER
- X-X- - APPROXIMATE FENCE LOCATION
- Q - CENTER LINE (ROAD, STREET, STREAM, ETC.)
- M/H - MANHOLE
- P/P - POWER POLE AND/OR TELEPHONE POLE
- R/R - RAILROAD
- R - RADIUS
- L - LENGTH OF CURVE
- D.I. - DROP INLET
- R.O.W. - RIGHT OF WAY

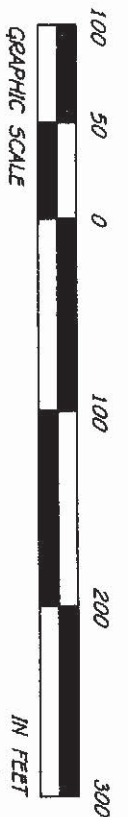
D.B. 572, Pg. 763



MAP OF SURVEY
made for
WILLIAM W. CORN
and wife,
CHARMAN PERRY CORN

HENDERSONVILLE TWP. HENDERSON COUNTY, N.C.
LAUGHTER, AUSTIN AND ASSOCIATES, P.A.
131 FOURTH AVENUE EAST
HENDERSONVILLE, NORTH CAROLINA 28792
(828) 692-9089

CREW CHIEF	JHL	CHECKED BY		DATE	12/15/10	SHEET NO.	1 OF 1
DRAWN BY	TPW	SCALE	1" = 100 FT.				
COORD. FILE	99022	DRAWING FILE	10158				
FLOOD MAP PANEL NUMBER	370125 0085	TAX PARCEL NUMBER	9670-24-2970				



JOB NO. 10-158 revised

An Overview of the Conditional Zoning Process & A Preview of Application #R-2010-03-C



**Henderson County Board of Commissioners Meeting
April 4, 2011**

Presented by: Anthony W. Starr, AICP, County Planning Director

Henderson County Planning Department

What is a Conditional Zoning District?

- A Conditional Zoning District (CD) is a site specific zoning district that limits the allowed uses of the general zoning district and applies conditions on the property.
- Similar to “conditional use permits” but is a legislative process and is not quasi-judicial in nature.
- The CD is tied to a “general zoning district.”
- Conditions can be placed on the property provided these conditions are:
 - ❖ “fair and reasonable”
 - ❖ Agreed upon by the BOC and the applicant
- The LDC allows CD’s for all of the general zoning districts.

Henderson County Planning Department

Why CD's are important?

- CD's are created for the purpose of providing an optional rezoning choice.
- Allows for special limitation and conditions on the use of the property proposed for rezoning.
- These limitations/conditions allow for appropriate developments to occur while removing the ability to develop other allowed uses of the general zoning district that may not be appropriate for a particular site.
- Protects adjacent neighbors and addresses their concerns
- Gives the BOC the ability to discuss the specifics about a development and respond to specific development concerns.

Henderson County Planning Department

How is a CD approved?

- Applied to property by rezoning request/application
- Legislative decision by Board of Commissioners
- Requires a public hearing (not quasi-judicial)
- Approval is linked with a site specific development plan
- Applies special limitations & conditions on the use of an individual development project
- Conditions agreed upon by Commissioners and applicant
- Rezoned property is identified on Official Zoning Map
- BOC approves an order specifying the conditions of the rezoning application.

Henderson County Planning Department

Changes to the Site Plan

- Changes to an approved CD or site plan shall be treated the same as text or map amendments and must be approved by the BOC (except as stated below).
- The Planning Director shall have the delegated authority to approve the following as described in the LDC:
 - Amendments to the site plan provided it is in writing and does not significantly alter the site plan or its conditions;
 - Increase structure size for non-residential development by 10% or 1,000 sq ft (whichever is less);
 - Increased density for residential developments up to 10% of the development and no more than 5 dwelling units (whichever is less).
- The Planning Director may decline to exercise the delegated authority if a public hearing is deemed appropriate.

Henderson County Planning Department

Monitoring of a CD

- After 3 years, the Planning Board may examine progress of an approved CD.
- If no progress has been made:
 - The Planning Board shall forward a report to the Commissioners and
 - May recommend that the property be reclassified to another district

Henderson County Planning Department

Previous CD zoning approved by County?

- The County currently has only 1 approved CD district.
 - District: Local Commercial Conditional District (LC-CD)
 - Use: County owned storage facility for the Emergency Services Department
 - Location: In the Foxwood Subdivision, adjacent to the Henderson County Landfill
 - Approved by the BOC in 2008

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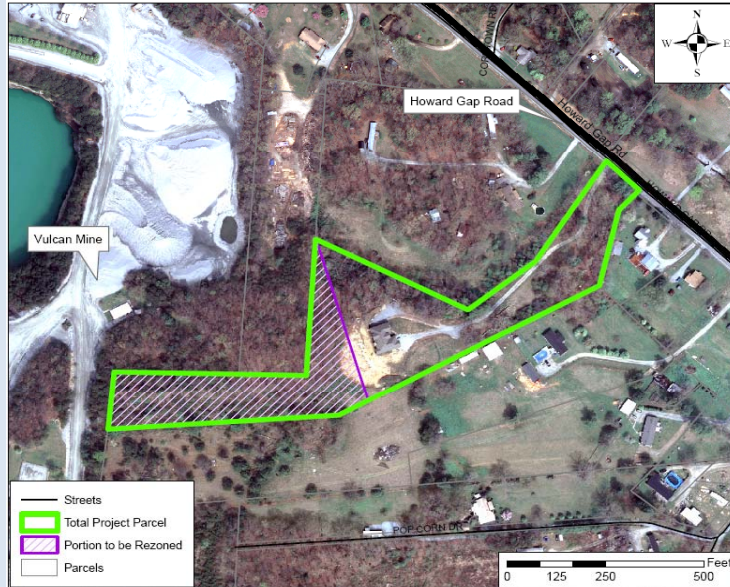
Rezoning Application #R-2010-03-C Preview

- Billy Corn, Owner and Applicant.
- Rezone approximately 2.42 acre of a 6.26 acre tract from Residential One (R1) to Industrial Conditional (I-CD).
- Property is located off Howard Gap Road.
- The proposed use shall be for the temporary storage of vehicles associated with the applicants automotive towing business.
- This would be the only use allowed in the I-CD and would have additional conditions as approved by the BOC.

Henderson County Planning Department

Rezoning Application #R-2010-03-C

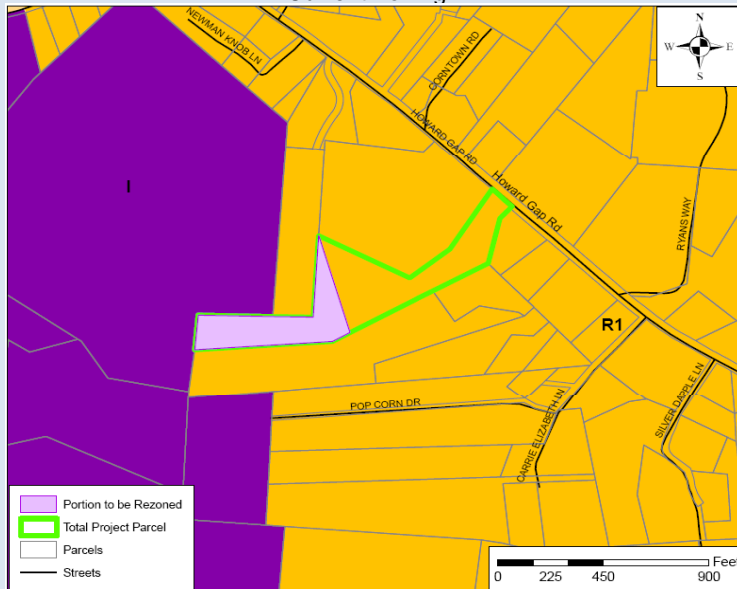
Aerial Photo



Henderson County Planning Department

Rezoning Application #R-2010-03-C

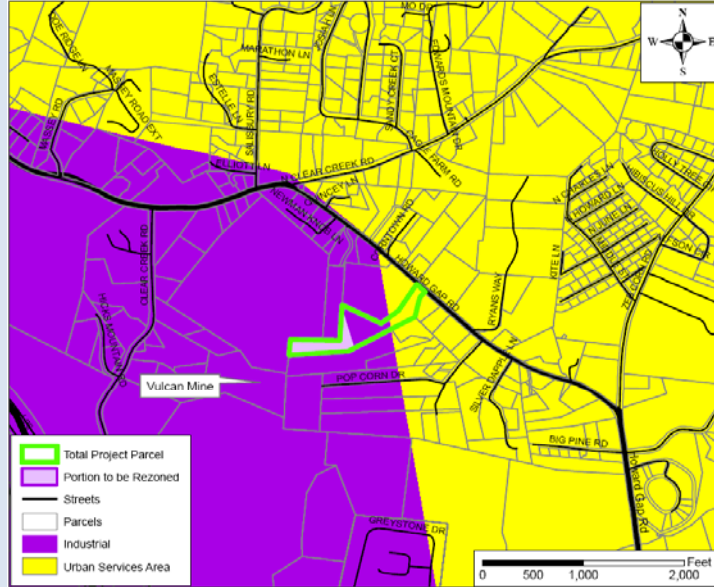
Current Zoning



Henderson County Planning Department

Rezoning Application #R-2010-03-C

2020 CCP Future Land Use Map



Henderson County Planning Department

Next Step

- The BOC must hold a public hearing before taking action on the rezoning application.
- Staff recommends that the BOC schedule a public hearing for rezoning application #R-2010-03-C for:
 - Monday, May 2, 2011, at 5:30 P.M.

Henderson County Planning Department

Questions and Discussion



**Henderson County Board of Commissioners Meeting
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Henderson County Planning Department