

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: Monday, April 1, 2013

SUBJECT: Public Hearing for Rezoning Application #R-2013-01-C

PRESENTER: Parker Sloan, Planner

ATTACHMENTS:

1. Staff Report
2. Aerial Photo Map
3. Summary of Conditional Zoning
4. Stipulation of Parties
5. Notice of Public Hearing
6. Certification of Notification of Public Hearing
7. Resolution of Consistency with CCP
8. Power Point Slides

SUMMARY OF REQUEST:

Rezoning Application #R-2013-01-C, which was submitted on December 28, 2012, requests the County rezone one tract at a total of 1.71 acres. The applicant requests a rezoning from a Residential Two Rural (R2R) zoning district to a Community Commercial Conditional (CC-CD) zoning district. The subject area parcel is owned by Roger Gagnon. The Broadway Group, LLC is the applicant. (PIN: 9539-98-3442).

The Henderson County Planning Board considered rezoning application #R-2013-01-C at its regularly scheduled meeting on February 22, 2013. During that meeting, the Planning Board voted unanimously to send forward a favorable recommendation on rezoning application #R-2013-01-C to rezone the Subject Area to a Community Commercial Conditional (CC-CD) zoning district and recommend requiring the applicant meet the conditions outlined in the Staff Report.

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 April 1, 2013, public hearing regarding rezoning application #R-2013-01-C were published in the Hendersonville Tribune on March 14, 2013 and March 21, 2013. The Planning Department sent notices of the hearing via first class mail to the owners of properties adjacent to the Subject Area and the subject area property owner on March 13, 2013 and posted signs advertising the hearing on the Subject Area on March 15, 2013.

BOARD ACTION REQUESTED:

After holding the required hearing, Planning Staff recommends that the Board of Commissioners approve the application to rezone the Subject Area to a Community Commercial Conditional (CC-CD) zoning district. State law requires that the Board adopt a written statement of consistency with the County Comprehensive Plan (CCP). A draft resolution is provided.

Suggested Motion:

I move that the Board adopt the attached resolution regarding the consistency with the CCP.

I move that the Board adopt the proposed map amendment with conditions as discussed.

Henderson County Planning Department Staff Report

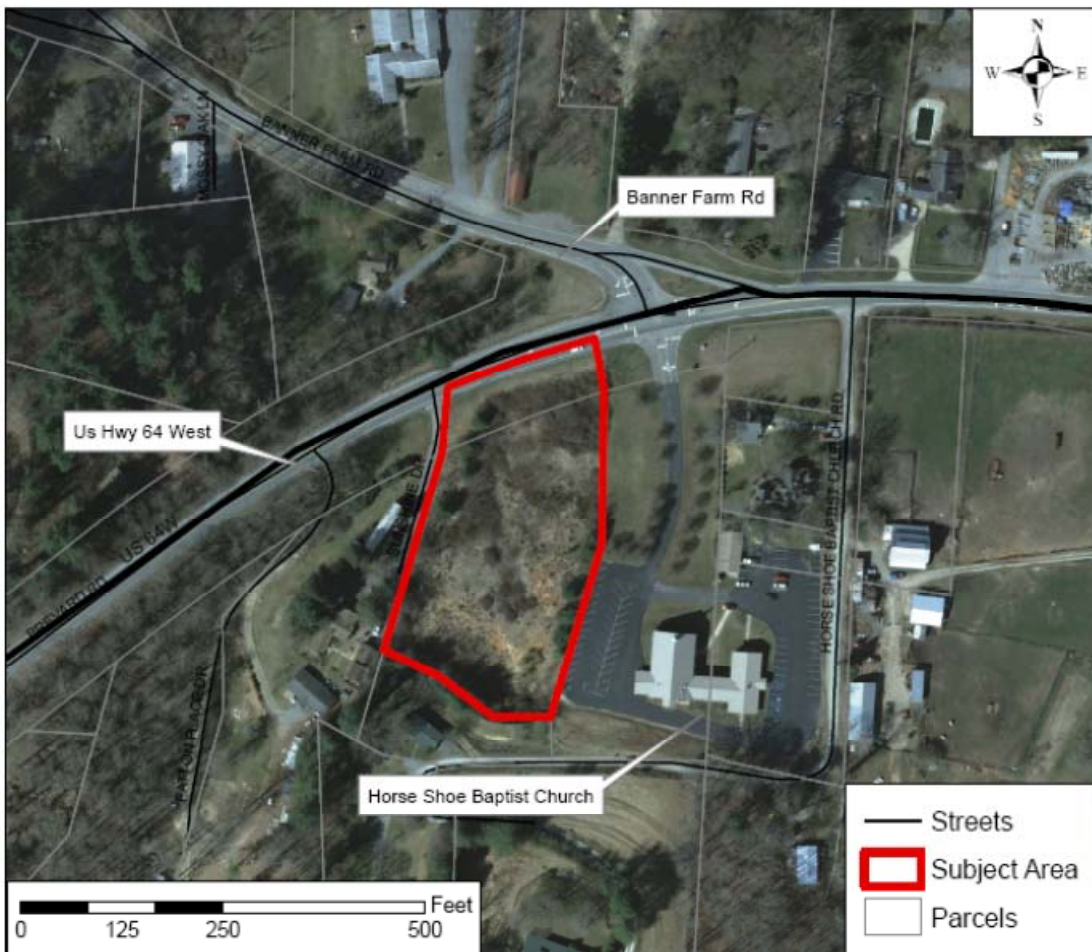
Rezoning Application #R-2013-01-C (R2R to CC-CD)

Roger Gagnon, Owner
The Broadway Group LLC, Applicant

1. Rezoning Request

- 1.1. **Applicant:** The Broadway Group, LLC
- 1.2. **Property Owner:** Roger Gagnon
- 1.3. **PIN:** 9539-98-3442
- 1.4. **Request:** Rezone Subject Area from an R2R (Residential Two Rural) zoning district to a CC-CD (Community Commercial Conditional District).
- 1.5. **Subject Area** (See Map A)

Map A: Map of Subject Area



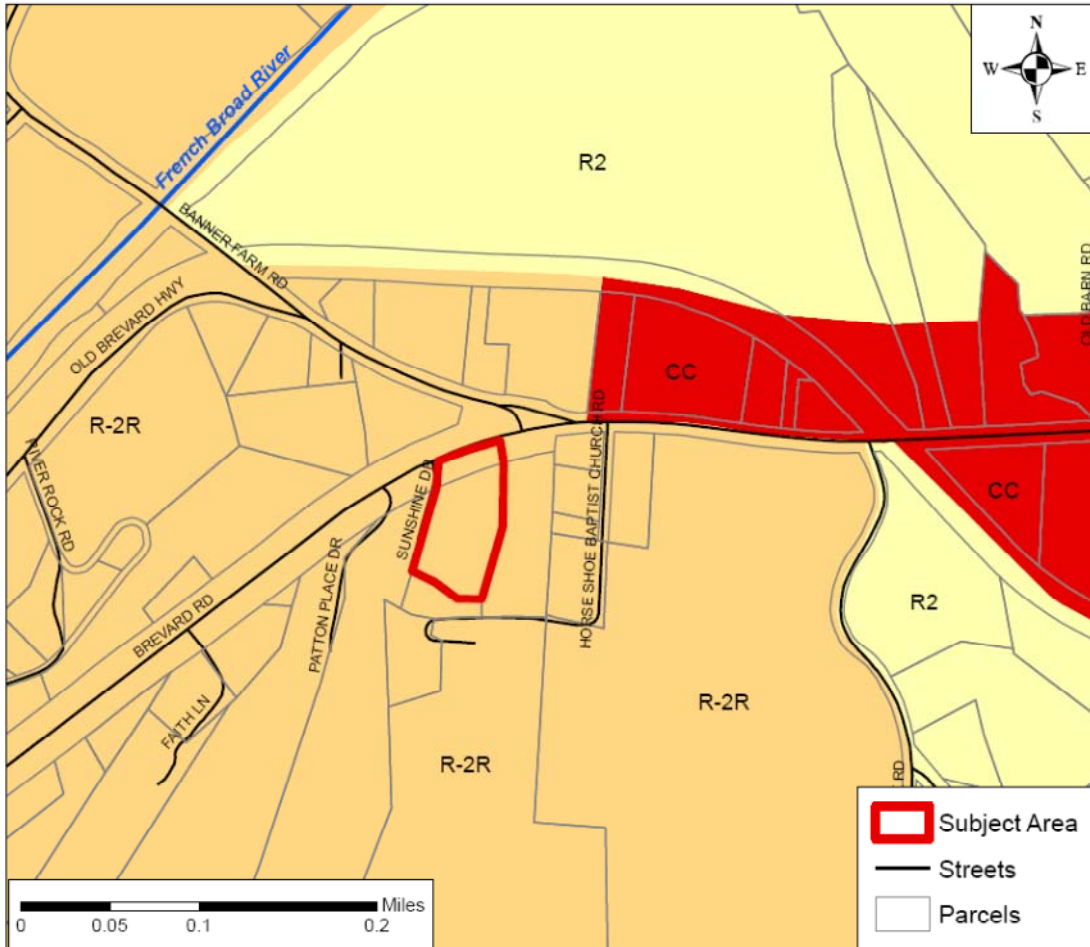
1.5.1. **Size:** Approximately 1.71 acres of land.

1.5.2. **Location:** The Subject Area is off of Brevard Road (US Hwy 64 west)

2. Current Zoning

2.1. **Application of Current Zoning:** The Subject Area is currently zoned R2R (Residential Two Rural), which was applied on September 19, 2007, as a result of the adoption of the Land Development Code (See Map B). The Subject Area was previously (prior to LDC adoption on September 19, 2007) zoned open use.

Map B: Current Zoning



2.2. **Adjacent Zoning:** 285 feet to the east of the Subject Area is Community Commercial zoning; to the south, north, and west is Residential Two Rural (R2R) zoning.

2.3. **District Comparison:**

2.3.1. **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).

2.3.2. **Community Commercial:** *“The purpose of the Community Commercial District (CC) is to foster orderly growth where the principle use of land is commercial. The intent of this district is to allow for commercial development consistent with the recommendations of the Comprehensive Plan. In accordance with the Comprehensive Plan, the district will allow for and provide commercial development that: (1) includes a variety of retail sales and services, public and private administrations, offices and all other uses done primarily for sale or profit on the local and community level; (2) is directed largely to defined Community Service Centers as defined in the Comprehensive Plan; (3) is compatible with adjacent development and the surrounding community; and (4) will minimize congestion and sprawl. This general use district is meant to be utilized in areas designated as Transition or Urban”* (Chapter 200A, Land Development Code §200A-34). CC requires 10 foot side and rear setbacks, maximum height 50 feet, a standard density of 16 units per acre, a maximum 80% impervious surface. A single commercial use on a single lot would be limited to 30,000 square feet maximum floor area and with a multi tenant structure the principal tenant would have a maximum floor area of 80,000 square feet.

3. **Current Uses of Subject Area and Adjacent Properties**

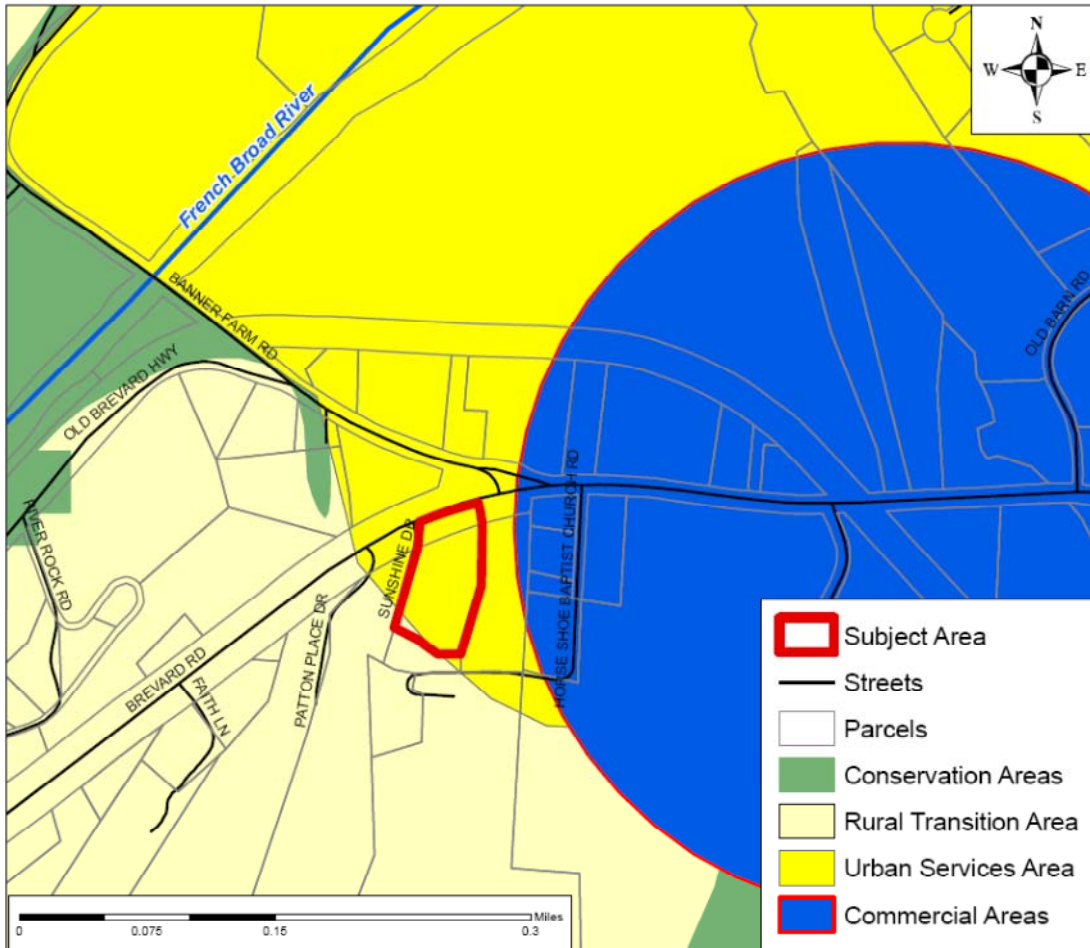
3.1. **Subject Area Use:** The Subject Area is currently vacant land.

3.2. **Adjacent Area Uses:** Surrounding area lands contain primarily single-family residences. To the east down Hwy 64 W there is the Horse Shoe hardware store and the the Homestead at Horse Shoe both within Community Commercial zoning.

4. **The Henderson County 2020 Comprehensive Plan (CCP)**

4.1. **Urban Services Area:** The CCP Future Land Use Map identifies the Subject Area as being located in the Urban Services Area (2020 CCP, Pgs. 128, 129 & Appendix 1, Map 24) (See Map D). The subject area is not within the nearby Community Service Node, however, those community service nodes are not parcel specific and the subject area is within close proximity and can therefore be considered part of the community service center node.

Map D: 2020 County Comprehensive Plan Future Land Use Map



- 4.1.1. The CCP states that, “the County’s economic development activities should be pursued within USA” (2020 CCP, Pg. 129).
- 4.1.2. 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).
- 4.1.3. The CCP states that, “the County’s economic development activities should be pursued within USA” (2020 CCP, Pg. 129).

5. The Etowah-Horse Shoe Community Plan

The Henderson County Board of Commissioners adopted the County Comprehensive Plan (CCP) on July 6, 2004. A principal recommendation of the CCP is the detailed study of individual communities within the County. The Etowah-Horse Shoe (EHS) Community Plan is a community specific comprehensive plan that outlines future goals related to land use and development, community character and design, natural and cultural resources, agriculture,

housing, community facilities and public services, transportation and economic development as it relates to the CCP. The Board of Commissioners by resolution took action on the EHS Community Plan on September 16, 2009.

On November 17, 2010, the Board of Commissioners after holding a public hearing adopted the zoning map amendments recommended in the EHS plan with modifications.

- 5.1. LC (Local Commercial) was recommended along US Hwy 64W from S. Rugby Road to All Star Lane, adjacent to the existing CC (Community Commercial) zoning district along 64W. The Board of Commissioners voted to leave the R2R after residents expressed concerns with commercial zoning in this area of Horse Shoe.

6. Conditional Zoning Districts

Staffs position at this time is that it supports a rezoning of the project site to Community Commercial. However, due to the neighboring residential uses and the distance from existing Community Commercial zoning, staff thinks a Community Commercial Conditional Zoning district would be more appropriate. This will limit the commercial use on the project site to only the proposed use, retail sales and services.

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 districts (See attachment 3).

According to the Land Development Code, 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 (LDC§200A-45 - §200A-51).

The subject area is currently vacant. The applicant, Broadway Group LLC, is proposing to use the site for retail sales and services, a use which is not allowed in R2-R. A rezoning is required for the business to be permissible. Staff suggests the following conditions be imposed on the Subject Area:

- 6.1. (1) Site Plan. Major *Site Plan* required in accordance with §200A-299 (Major Site Plan Review).
- 6.2. (2) Lighting. *Adequate lighting* shall be placed in areas used for vehicular/pedestrian access including, but not limited to: stairs, sidewalks, crosswalks, intersections, or changes in grade. *Lighting mitigation* required.
- 6.3. Building Orientation: The building may be located within 35 feet from the edge of the ROW. The main entrance of the building should face the street and all of the parking should be located on the side and rear of the building.
- 6.4. Hydrant: A fire hydrant must be located within 400 of any part of the building. This needs to be indicated on the site plan and confirmed.
- 6.5. Water Supply Watershed: The subject property is located within a WS-IV-PA and allows a maximum built upon limit of 70% under the high density option. Engineered storm water controls as prescribed in the County LDC is required.

- 6.6. Buffer: The County LDC requires a B1 buffer (20 feet) along each side of the property that is adjacent to a residential district.
- 6.7. All required parking spaces must meet the design requirements of the Land Development Code §200A-161-165. The proposed parking spaces shall comply with the landscape design standards and off street parking provisions as outlined in the Land Development Code (LDC Article V and VI). It appears the applicant is proposing more than the required parking spaces and the spaces shown on the site plan meet the requirements of the Land Development Code.
- 6.8. Etowah-Horse Shoe Community Plan Recommendations. All three of the following recommendations were agreed to by the applicant on March 19, 2013:
 - 6.8.1. Design Standards: The Etowah-Horse Shoe Community Plan recommended design standards for noresidential uses (Goal CCD1, Objective CCD1.1). Design standards should prohibit unfinished steel or aluminum roofing and aluminum siding material and vinyl siding, and require at least 30% masonry fronts which includes stone or brick (log or timber materials may be acceptable). Where buildings are visible from the side, appropriate evergreen plantings shall be used to obscure the view from adjoining streets. The site plan should indicate compliance.
 - 6.8.2. Signs: The Etowah-Horse Shoe Community Plan recommended new sign requirements (Goal CCD1, Objective CCD1.3). Restrict sign height for commercially zoned areas to a maximum of eight (8) feet. Require adequate landscaping around signs to improve aesthetics of signage. The proposed sign on the subject property shall be a monument sign (sign base shall be wider than the sign). The site plan should indicate compliance.
 - 6.8.3. Lighting: The Etowah-Horse Shoe Community Plan recommended standards to limit light pollution (Goal CCD1, Objective CCD1.3). Incorporate standards that require semi-cutoff or full-cutoff lighting for major subdivisions and commercial developments within the Planning Area. The site plan should indicate compliance.
- 6.9. Any signs used on site must meet current standards of Article VII of the LDC
- 6.10. If the applicant has plans for future expansion of the existing business, all potential modification or expansions should be noted on the site plan.

7. Staff Comments and Recommendations

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.

Staff's position at this time, under the guidelines of current plans, policies and studies, is it supports the rezoning of the portion of the project site to be zoned to a Community Commercial Conditional District (CC-CD). 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 indicates that the USA may be suitable for commercial development provided the development is in keeping with the surrounding community.

- 7.2. **Adjacent Zoning:** The Subject Area does not abut an existing Community Commercial (CC) zoning district, however one is in close proximity to the east and could abut if extended via the right-of-way.
- 7.3. **Conditional Zoning Districts:** Applying conditions or restrictions to the Subject Area reduces and/or eliminates the impact on the surrounding community. There are circumstances in which a general use district designation allowing such a use or all uses 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 the Land Development Codes conditional zoning districts, the adopted Comprehensive Plan, and adopted district.

8. Technical Review Committee Recommendations

- 8.1. The Technical Review Committee at its meeting on January 22, 2013 voted unanimously to recommend approval of rezoning application R-2013-01-C to rezone the subject area to a Community Commercial conditional zoning district with the condition that the site plan be revised to include several minor corrections. The associated site plan was also approved by the Technical Review Committee at its meeting on January 22, 2013.
- 8.2. A revised site plan was submitted on January 24, 2013 that included the required corrections and changes outlined by the TRC and was subsequently approved by the Zoning Administrator.

9. Planning Board Recommendations

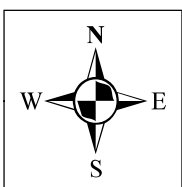
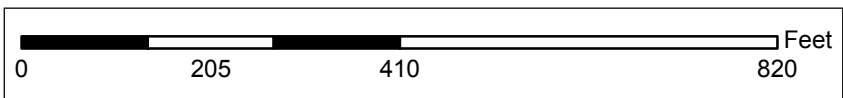
- 9.1. The Planning Board at its meeting on February 21, 2013 voted unanimously to recommend approval of rezoning application R-2013-01-C to rezone the subject area to a Community Commercial conditional zoning district and recommended the applicant be required to meet the Land Development Code conditions for a retail sales and services business as shown on the site plan, as well as, the conditions from the Etowah-Horse Shoe Community Plan shown in the staff report.






Us Hwy 64 West

Banner Farm Rd

Horse Shoe Baptist Church



	Subject Area
	Streets
	Parcels

Rezoning Application
R-2013-01-C
Broadway Group LLC, applicant



**OFFICE OF THE
COUNTY ATTORNEY**

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Memorandum

TO: Board of Commissioners
FROM: Sarah Zambon
DATE: 18 March 2013
RE: Summary of Conditional Zoning

Conditional Zoning

- Is a legislative not quasi-judicial proceeding;
- A public hearing is required but there is no sworn testimony, no cross-examination, and people do not need standing to speak. Testimony may be time-limited;
- Requires a site-plan and only that proposed use is permissible;
- Commissioners may place conditions on the property and use but those conditions must be agreed to by the Applicant.

Rezoning R-2013-01-C

- If approved, only permitted use would be retail sales and services;
- Planning Board met on February 21, 2013 and recommended the approval with the following suggested conditions:
 - **Design Standards.** Subject Property shall be bound by the proposed design standards of the Etowah-Horse Shoe Small Area Plan. Design standards should prohibit unfinished steel or aluminum roofing and aluminum siding material and vinyl siding, and require at least 30% masonry fronts which includes stone or brick (log or timber materials may be acceptable). Where buildings are visible from the side, appropriate evergreen plantings shall be used to obscure the view from adjoining streets.
 - **Signs.** Subject Property may not have a sign height of more than eight (8) feet. Adequate landscaping around the sign is required.
 - **Lighting.** Subject Property shall incorporate semi-cutoff or full-cutoff lighting to limit light pollution.
- Applicant has agreed to the above conditions as shown by the stipulations signed by the Applicant on March 19th, 2013_;
- This Board may remove or modified the suggested conditions or provide additional conditions. New or modified conditions must be agreed to by the Applicant.

STIPULATION OF PARTIES

The undersigned parties to this matter hereby stipulate and agree to the following:

1. That on December 28, 2012, Applicant **Broadway Group, LLC** submitted a conditional rezoning request to be heard by the Henderson County Board of Commissioners.
2. That a conditional rezoning is permitted under our ordinance under provisions 200A-45 through 200A-51.
3. That the Applicant's request came before the Henderson County Board of Commissioners in a public hearing on April 1, 2013.
4. That in a conditional rezoning the Applicant must agree to any conditions placed on the property by the Board of Commissioners.
5. That the Applicant and the County, by and through its Planning Director, agree on the following conditions prior to the hearing:
 - a. Design Standards. Subject Property shall be bound by the proposed design standards of the Etowah-Horse Shoe Small Area Plan. Design standards should prohibit unfinished steel or aluminum roofing and aluminum siding material and vinyl siding, and require at least 30% masonry fronts which includes stone or brick (log or timber materials may be acceptable). Where buildings are visible from the side, appropriate evergreen plantings shall be used to obscure the view from adjoining streets.
 - b. Signs. Subject Property may not have a sign height of more than eight (8) feet. Adequate landscaping around the sign is required.
 - c. Lighting. Subject Property shall incorporate semi-cutoff or full-cutoff lighting to limit light pollution.
6. That the Applicant understands and agrees that the Board of Commissioners may request additional or alternative conditions to this conditional rezoning. The Applicant may or may not agree to these possible conditions.

This the 19 day of MAR 2013.

Melvin Bellard
Coordinator, Broadway Group, LLC

Autumn Radcliff
Autumn Radcliff, Interim Planning Director

Prepared By: *Sarah G Zambon* Sarah Grace Zambon, Deputy County Attorney

**NOTICE OF PUBLIC HEARING
ON PROPOSED ZONING MAP AMENDMENT
(Rezoning Requests #R-2013-01-C)**

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

Rezoning Application #R-2013-01-C, which was submitted on December 28, 2012, requests the County rezone approximately 1.71 acres of land. The applicant requests a rezoning from a Residential Two Rural (R2R) zoning district to a Community Commercial Conditional (CC-CD) zoning district. The subject area parcel is owned by Roger Gagnon and the applicant is The Broadway Group, LLC. (PIN: 9539-98-3442).

The public hearing will be held on Monday, April 1, 2013, at 5:30 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.

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

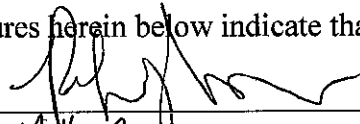
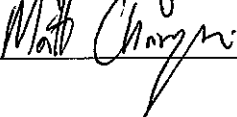
For publication in the Hendersonville Tribune on Thursday, March 14, 2013 and Thursday, March 21, 2013.

Certification of Notice of Public Hearing

In accordance with NCGS 153A-343 the Planning Department certifies notice of the April 1, 2013 hearing regarding Rezoning Application #R-2013-01-C were:

1. Submitted to the Hendersonville Tribune on March 11, 2013 to be published on March 14, 2013 and February 21, 2013 by Parker Sloan;
2. Sent, via first class mail, to the owners of properties adjacent to the Subject Area(s) on March 14, 2013 by Matt Champion;
3. Sent, via first class mail, to the property owners on March 14, 2013 by Parker Sloan; and
4. Signs were posted on the Subject Area(s) on March 15, 2013 by Matthew Champion.

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

1. 
2. 

STATE OF NC

COUNTY OF GUILFORD

I, Toby Linville, a Notary Public, in and for the above County

and State, do hereby certify that

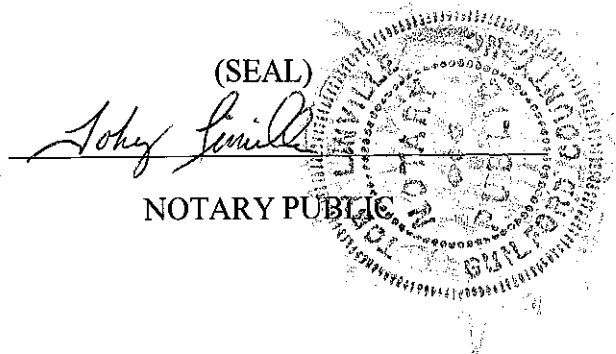
Parker Sloan, and Matt Champion

personally appeared before me this day.

WITNESS my hand and notarial seal, this the 15 day of March, 2013.

My commission expires:

5/25/16





RESOLUTION OF CONSISTENCY WITH THE COUNTY COMPREHENSIVE PLAN

WHEREAS, pursuant to N.C. General Statute §153, Article 18, the Henderson County Board of Commissioners exercises regulations relating to development within the County's jurisdiction; and

WHEREAS, the Henderson County Board of Commissioners (Board) adopted the Land Development Code (LDC) on September 19, 2007 and has amended the LDC to address new and changing issues;

WHEREAS, the Board desires to update and revise the regulations of the LDC; and

WHEREAS, the Planning Director and Planning Board provided recommendations regarding the proposed zoning map amendment with case #R -2013-01-C; and

WHEREAS, pursuant to N.C. General Statute §153-323, the Planning Director provided the prescribed public notice and the Board held the required public hearing on April 1, 2013; and

WHEREAS, N.C. General Statute §153-341 requires the Board to adopt a statement of consistency with the County Comprehensive Plan (CCP); and

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

1. That the Board reviewed the proposed map amendment (#R -2013-01-C – Broadway Group, LLC) and finds that it reasonable, in the public interest and it is consistent with the CCP and the Growth Management Strategy located therein; and
2. That the Board determines that the proposed map amendment provides for the sound administration of the LDC while balancing property rights and promoting reasonable growth within the County; and
3. That this Resolution shall be retained in the Office of the Clerk to the Board of Commissioners.

THIS the 1st day of April, 2013.

HENDERSON COUNTY BOARD OF COMMISSIONERS

BY: _____
CHARLIE MESSER, Chairman

ATTEST:

Terry Wilson, Clerk to the Board

[COUNTY SEAL]

Rezoning #R-2013-C-01 The Broadway Group LLC, Applicant



Henderson County Board of Commissioners Meeting
April 1, 2013

Presented by: Parker Sloan, Planner

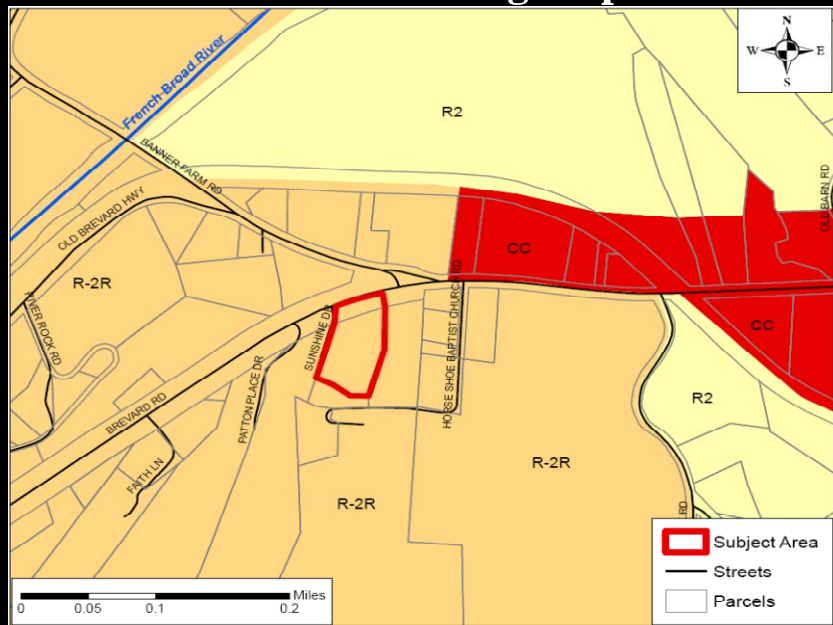
Henderson County Planning Department

Aerial Photo Map



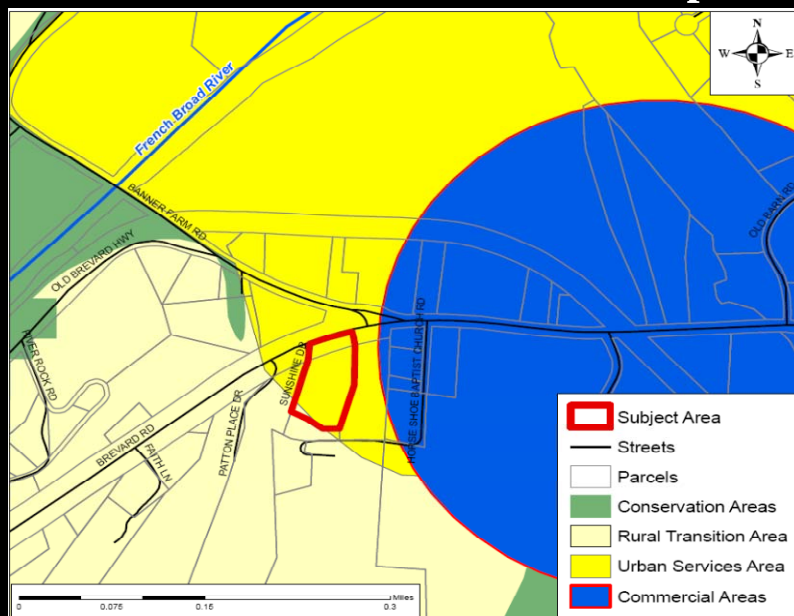
Henderson County Planning Department

Current Zoning Map



Henderson County Planning Department

2020 CCP Future Land Use Map



Henderson County Planning Department





Rezoning #R-2013-C-01

Public Hearing Comments



Rezoning #R-2013-C-01

State Law requires that the Board adopt a written statement of consistency with the County Comprehensive Plan (CCP). A draft resolution is provided

Suggested Motion:

I move that the Board adopt the attached resolution regarding the consistency with the CCP

I move that the Board adopt the proposed map amendment with conditions as discussed.

