

REQUEST FOR BOARD ACTION

HENDERSON COUNTY PLANNING BOARD

- MEETING DATE:** December 15, 2016
- SUBJECT:** Rezoning Application #R-2016-04
- PRESENTER:** Kyle Guie, Planner
- ATTACHMENTS:**
1. Staff Report
 2. Residential Two Rural (R2R) District Text
 3. Estate Residential (R40) District Text
 4. PowerPoint Handouts

SUMMARY OF REQUEST:

Rezoning Application #R-2016-04, which was initiated on November 3, 2016 at the request of applicant, Philip Fisher, who requests the County rezone approximately 3.53 acres of land (hereafter the "Subject Area") from an Estate Residential (R-40) zoning district to a Residential Two Rural (R2R) zoning district.

Planning staff posted the property giving notice of the Planning Board meeting on December 5, 2016. The Planning Board has 45 days from its first consideration of a rezoning application to make a recommendation to the Board of Commissioners. If no recommendation is made by this date, the application proceeds to the Board of Commissioners with an automatic favorable recommendation. Upon request of the Planning Board, the Applicant may choose to grant a 45-day extension.

Planning Board action to recommend that the Board of Commissioners approve, approve with modifications, approve with conditions, table, or deny rezoning action #R-2016-04 would be appropriate.

Suggested Motion:

I move that the Planning Board recommend the Board of Commissioners approve, approve with modification or deny rezoning application #R-2016-04 to rezone the Subject Area to a Residential Two Rural (R2R) zoning district based on the recommendations of the Henderson County 2020 Comprehensive Plan and other relevant planning documents.

Henderson County Planning Department Staff Report

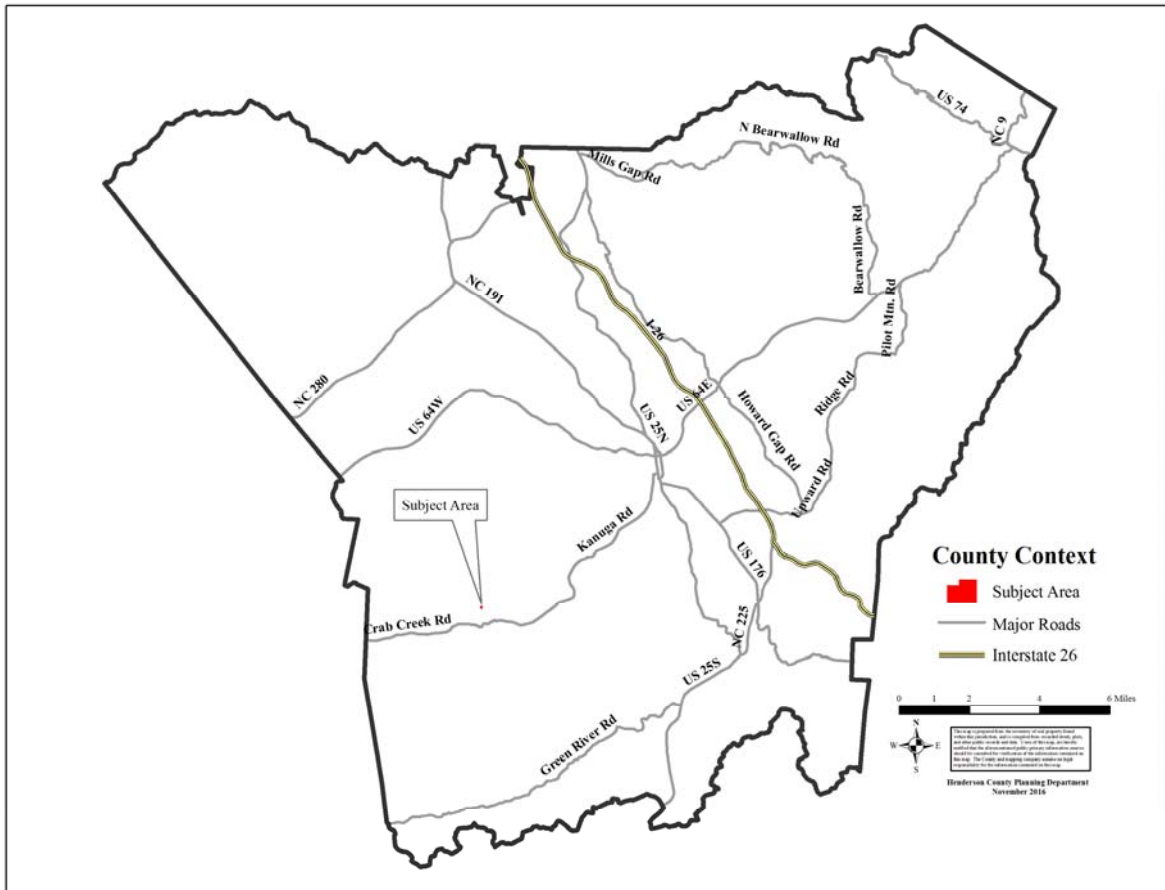
Rezoning Application #R-2016-04 (R-40 to R2R)

Owner
Philip Fisher

1. Rezoning Request

- 1.1. **Applicant:** Philip Fisher
- 1.2. **Property Owner:** Philip Fisher
- 1.3. **PIN:** 9546152833
- 1.4. **Request:** Rezone subject area from an Estate Residential (R-40) zoning district to a Residential Two Rural (R2R) zoning district.
- 1.5. **Size:** Approximately 3.53 acres of land
- 1.6. **Location:** The subject area is located on Deer Meadow Lane north of Crab Creek Road. Refer to map A for a County Context map and map B for an aerial photo map.

Map A: County Context



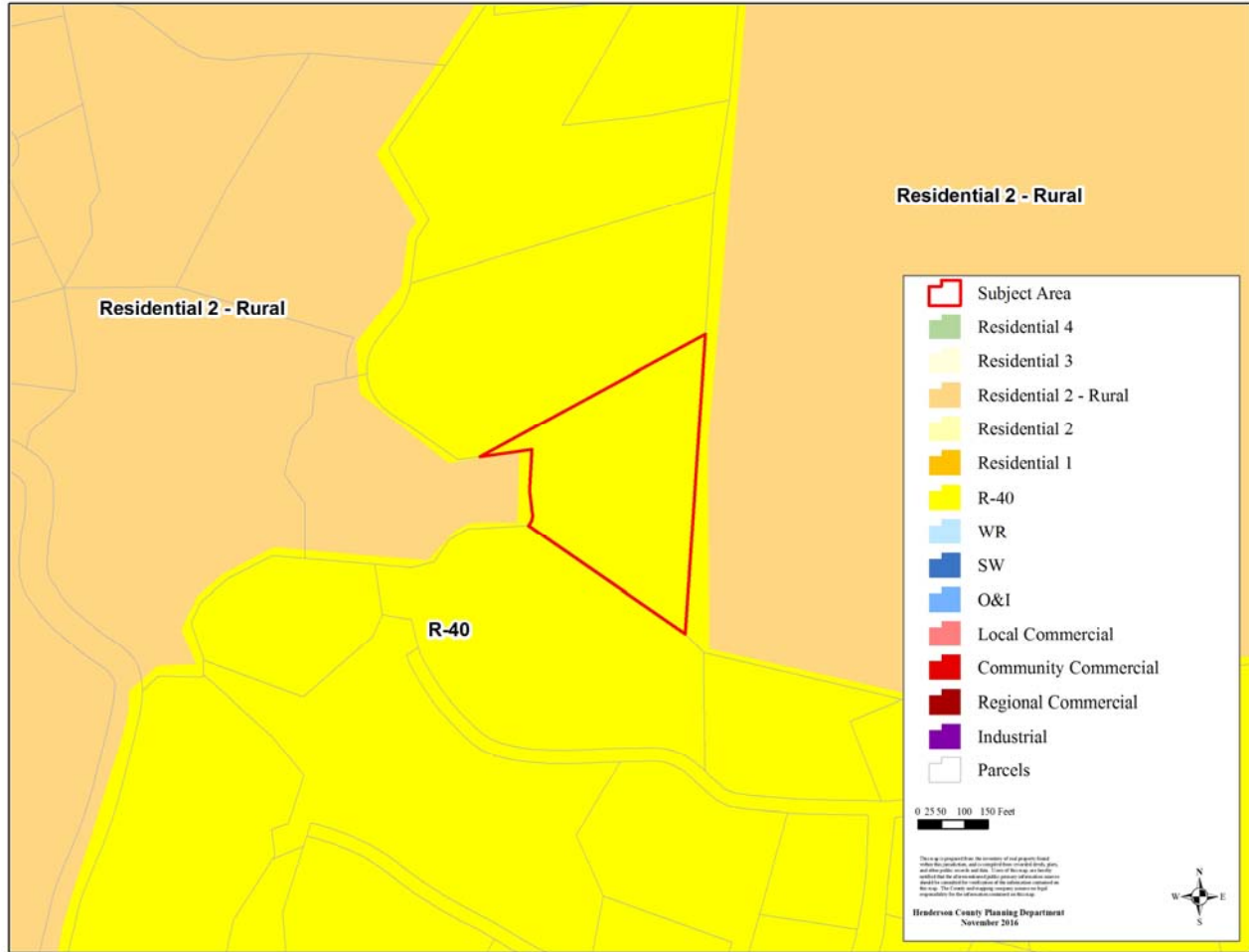
Map B: Aerial Photo



2. Current Zoning

2.1. **Application of Current Zoning:** The subject area is currently zoned Estate Residential (R-40) (See Map C).

Map C: Current Zoning



2.2. **Adjacent Zoning:** The subject area is adjacent to Residential Two Rural (R2R) to the west and east and Estate Residential (R-40) to the north and south.

2.3. District Comparison:

2.3.1. **Estate Residential (R-40) District:** The Estate Residential District (R-40) is established to maintain the zoning in place prior to the adoption of this Chapter 200A. This district is established as a district in which the principal use of the land is for low-density residential use. This district is intended to ensure that residential development not having access to public water supplies and dependent upon septic tanks for sewage disposal will occur at a sufficiently low density to provide a healthful environment. This district is also intended to be a quiet, low-density neighborhood consisting of single-family residences. The R-40 District shall not be extended from the locations designated on the Official Zoning Map, nor shall new R-40 District areas be designated except where initiated by the

Board of Commissioners or Planning Board. The R-40 District may be altered or removed with the completion of Community Plans.

2.3.2. **Residential Two Rural (R2R) District:** 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.

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

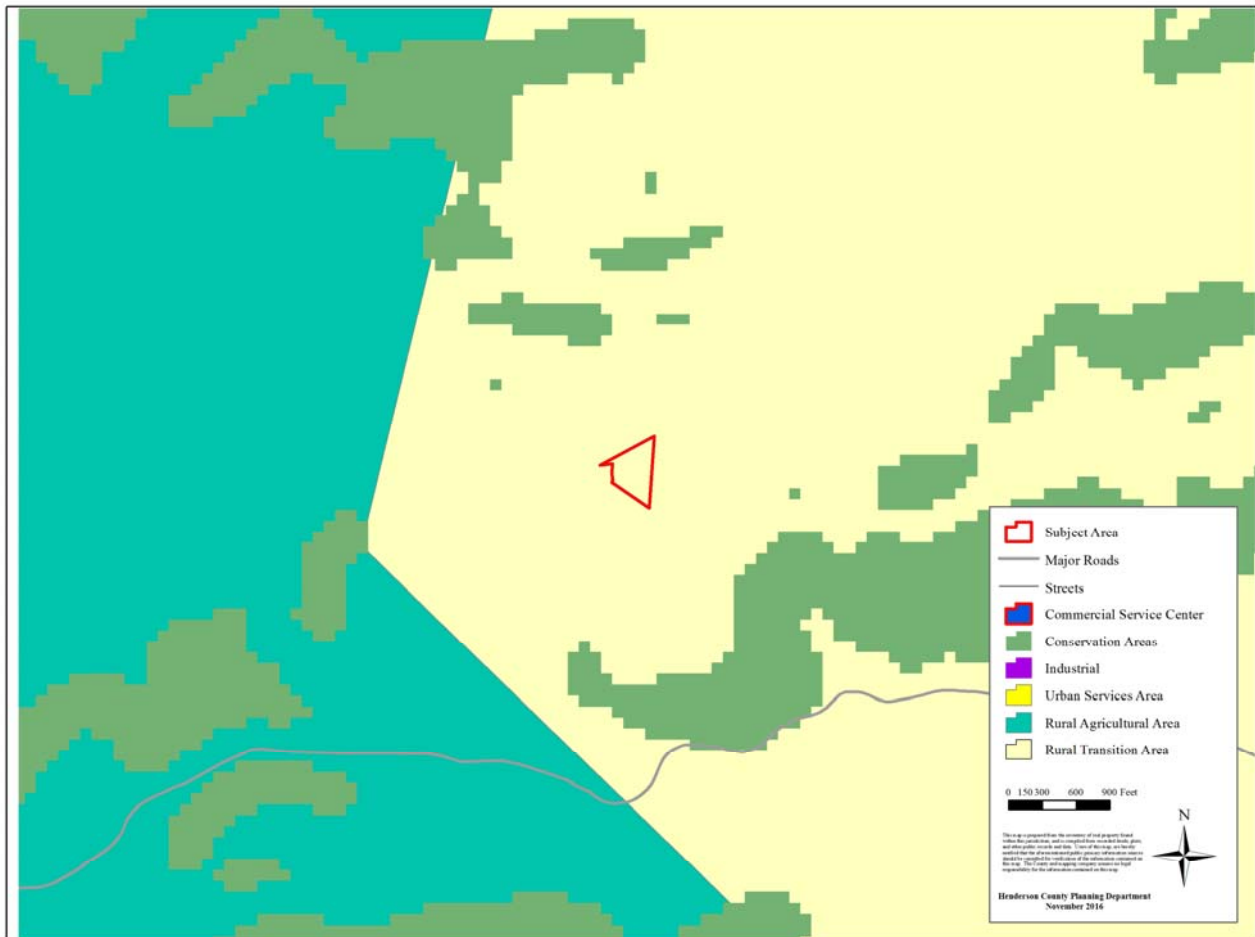
3.1. **Subject Area Uses:** The subject area is currently wooded and vacant.

3.2. **Adjacent Area Uses:** The surrounding properties are mainly residential uses and a camp is adjacent on the east side of the subject area.

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

4.1. The CCP Future Land Use Map identifies the subject area as being located in the Rural Transition Area (RTA) (2020 CCP, Pgs. 134& Appendix 1, Map 24). (See Map D).

Map D: 2020 County Comprehensive Plan Future Land Use Map



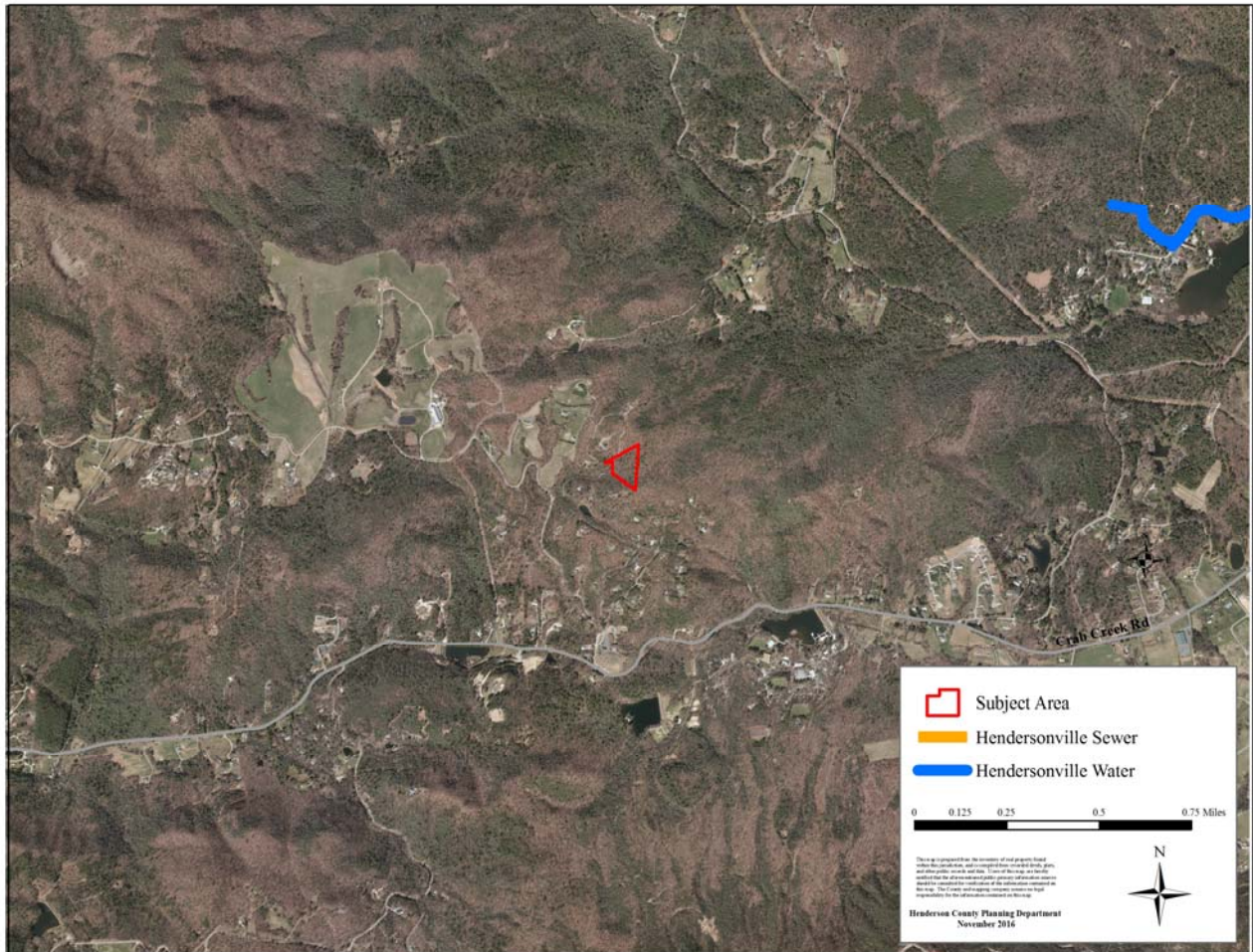
4.1.1. **Rural Transition Area (RTA):** The RTA is currently rural in character, with existing pockets of limited higher density residential and commercial development. Slopes vary across the RTA, although the area can be considered to be generally developable. The primary factor preventing urban development in the RTA is the absence of sewer and water service. The RTA will continue to experience extensive development over the operational timeframe of this Comprehensive Plan. (2020 CCP, Pg. 134).

5. **Water and Sewer**

5.1. **Public Water:** Private well water proposed

5.2. **Public Sewer:** On-site septic proposed

Map H: Water and Sewer Map



6. Staff Comments

- 6.1. **The 2020 CCP:** The CCP Future Land Use Map (See Map D) places the Subject Area in the Rural Transition Area classification. The text and map of the 2020 CCP suggest that the Subject Area would be suitable for residential development.
- 6.2. **Adjacent Zoning:** The subject area is adjacent to Residential Two Rural (R2R) to the west and east and Residential Forty (R-40) to the north and south.

7. Technical Review Committee Recommendations

- 7.1. To Be Determined

8. Planning Board Recommendations

- 8.1. To Be Determined

§42-29. 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 §42-63 (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:

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

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 (1/2) 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 five (5) feet from any property line.
- (5) Maximum height may be exceeded in multifamily developments as detailed in §42-63 (Supplemental Requirements) SR 1.6. (Dwelling, Multifamily, Five (5) or More Units), provided such developments do not exceed 50 feet in height.

§42-37. Estate Residential District (R-40)

- A. **Purpose.** The Estate Residential District (R-40) is established to maintain the zoning in place prior to the adoption of this Chapter 200A. This district is established as a district in which the principal use of the land is for low-density residential use. This district is intended to ensure that *residential development* not having access to public water supplies and dependent upon septic tanks for sewage disposal will occur at a sufficiently low density to provide a healthful environment. This district is also intended to be a quiet, low-density neighborhood consisting of single-family residences. The R-40 District shall not be extended from the locations designated on the Official Zoning Map, nor shall new R-40 District areas be designated except where initiated by the Board of Commissioners or *Planning Board*. The R-40 District may be altered or removed with the completion of *Community Plans*.
- B. **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 §42-63 (Supplemental Requirements). The Conservation Subdivision option shall be available in the R-40 District. Minimum lot sizes shall not apply when using the Conservation Subdivision option and an average density of one (1) unit per 40,000 square feet shall be applied.

Table 2.11. R-40 Dimensional Requirements			
(1) Minimum <i>Lot Area</i> (sq ft)			40,000
Minimum <i>Lot Area Per Dwelling (Family Unit)</i> (sq ft)			40,000
(3) <i>Yard Setbacks</i> (feet)	<i>Front or ROW</i>	(2) Major <i>Roads</i>	75
		All Others	60
	<i>Side</i>		35
	<i>Rear</i>		35
Maximum Height (feet)			Unlimited

- (1) The minimum *lot area* 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 twice the minimum *lot area* of the district.
- (2) Major *roads* shall include: Interstate 26, US Highway 64, US Highway 25, US Highway 176, NC Highway 280, NC Highway 191, Kanuga/Crab Creek Road (SR 1127), Clear Creek Road (SR 1503), Upward Road (SR 1722), and the Upward Road Connector (SR 1783).
- (3) *Yard setbacks* shall be measured from the centerline of *right-of-way*. Where the *road* is a major *road* and is more than two (2) lanes (including parking lanes), the *yard setback* requirements shall be measured and begin at a point on the pavement 12 feet from the edge of the paved *road* abutting the property in subject.
- C. **Permitted Uses.** Within the R-40 District, the following uses are permitted:
- (1) *Dwelling, single-family, and manufactured homes (multi-section)*, excluding *manufactured homes (singlewide)* and *mobile homes* (See SR 1.5 (*Dwelling, Manufactured/Mobile Home (multi-section/singlewide)*) and SR 1.8 (*Dwelling, Single Family Detached*)).

- (2) *Church*, provided that:
- a. The *structures* are placed not less than 50 feet from any property line;
 - b. They are located with access to a street, as shall be determined by the *Zoning Administrator*; and
 - c. There is a planted buffer strip along the side and rear property lines, except where such lines run parallel and contiguous with streets, streambeds, lakes and railroad tracks. (See also SR 5.19 (*Religious Institution*))
- (3) *Cemetery* (On property contiguous to or adjacent to the principal *church* assembly building) (See also SR 5.3 (Cemetery/Mausoleum/Columbarium (excluding crematoriums))).
- (4) *Church* bulletin boards not exceeding 12 square feet in area.
- (5) *Signs* not more than four (4) square feet in area advertising the sale or rental of property on which they are located.
- (6) *Utility Substation* (See SR 9.13 (*Utility Substation*)).
- (7) Customary Accessory Building (Including private garages, noncommercial greenhouses and workshops).
- a. Shall be permitted in *rear yards*, provided that they are located not less than five (5) feet from any property line;
 - b. May be permitted in *side yards*, provided that their placement shall not exceed the minimum *side yard* setback requirement for that district or use;
 - c. Shall not be permitted in *front yards*, except in the following cases:
 1. Where, by definition, more than one (1) *front yard* exists, such as in corner *lots* or *double fronted lots*; or
 2. Where the measurement of a *lot's* perimeter boundary is equal to or exceeds 50 percent of the abutting *road right-of-way*;
 - d. In Subsection c.1. and c.2. above, an accessory building shall not be located closer to the center line of the abutting *road* than is otherwise permitted by this Chapter;
 - e. In these cases only, such determination shall be made by the *Zoning Administrator* on a case-by-case basis. Determinations shall take into account orientation of the *structure* and dwelling, *road* and *driveway* location, topographical features, traffic volume, and visual buffers; and
 - f. In no case shall an accessory building be permitted in any *front, side* or *rear yard* if it exceeds 15 feet in height or if it occupies more than 30 percent of the required yard area; however, height restrictions do not apply on lots of one (1) or more acres. Maximum building height for private boathouses shall be 25 feet measured from the *full pond elevation* (lakes) or *mean sea level* elevation (rivers).

- (8) *School (Public/Private/Charter)* (See SR 5.20 (*School (Public/Private/Charter)*)).
- (9) Civic and cultural buildings, including auditoriums, theaters for the performing arts, museums, art galleries, symphony and concert halls and historical societies, provided that:
 - a. The structures are placed not less than 50 feet from any property line;
 - b. They are located with access to a street, as shall be determined by the *Zoning Administrator*;
 - c. There is a planted buffer strip along the side and rear property lines, except where such lines run parallel and contiguous with streets, streambeds, lakes and railroad tracks;
 - d. The facility is not operated for profit and satisfactory proof of the tax-exempt status of the organization is exhibited to the *Zoning Administrator*;
- (10) *Communications Facilities, Category 1* (See SR 9.3 (*Communications Facilities, Category 1*)).
- (11) *Family Care Home* (See SR 1.10 (*Family Care Home*)).
- (12) Solar Panels (See SR 2.11 (Solar Panels))

D. Permitted with a Special Use Permit. Within the R-40 District, the following uses are permitted with a *special use* permit provided that the conditions listed below be met. This *special use* permit shall be issued in accordance with §42-356 (Special Use Permits):

- (1) *Park* (See SR 4.16 (*Park*)).
- (2) *Camp* (See SR 4.3 (*Camp*)).
- (3) Tennis Club (See SR 4.24 (*Swim and Tennis Club*)).
- (4) Racquet Club.
- (5) *Golf Course* (See SR 4.7 (*Golf Course and/or Country Club*)) (Miniature golf courses and private driving tees operated for commercial purposes are not allowed.) .
- (6) Customary Incidental Home Occupation (permitted as accessory uses in a residence). Customary incidental home occupations include, but are not limited to: dressmaking, cooking, baking, music instruction, and the practice of such professions as insurance, medicine, artistry, architecture, and accounting. Customary incidental home occupations must:
 - a. Be conducted entirely within a dwelling;
 - b. Be carried on by the occupants thereof;
 - c. Be clearly incidental and secondary to the use of the dwelling for residential purposes;
 - d. Not change the character thereof;
 - e. Not install or use mechanical equipment except such as is normally used for domestic or professional purposes;

- f. Not have over 25 percent of the total floor space of any *structure* in use for a home occupation; and
- g. Not be conducted in any accessory building.

(7) *Library* (See SR 5.14 (Museum/*Library/Archive*)).

(8) *Bed-and-Breakfast Inn* (See SR 1.2 (*Bed and Breakfast Inn*)).

(9) R-O Residential Open Spaces Development.

- a. Any use permitted in the R-40 District, with any conditions pertaining thereto, shall be a permitted use.
- b. Establishment of R-O Development. An R-O Development shall be considered to conform to the requirements of such district when the following circumstances exist:

1. An entire tract of land under one (1) ownership is being subdivided at one (1) time pursuant to an overall plan of development which includes open spaces, such as *golf courses*, lakes, recreational areas, meadows, *parks*, woods or other open or green spaces. All required *open space* shall be dedicated to the public and accepted by the County or transferred to a property owners' association or transferred to a private club, subject to deed restrictions forbidding its later *subdivision* or development for other than residential *open space* purposes.
2. Such *open spaces* consist of one (1) or more parcels of land in the proposed *subdivision* which have a total of at least ten (10) percent of the entire tract. No parcel of land less than one (1) acre in area shall be considered in arriving at the total area of the *open spaces*.
3. The gross residential density of the area being subdivided will be no more than the density that would have been permitted in the total area of said tract being subdivided, without regard to the special provisions applying to an R-O Development hereinafter set out in subsection c.

(a) No R-O Development shall be established unless and until there is delivered to the *Zoning Administrator* a written instrument in recordable form, executed by the *owner* or *owners* of all interests in the proposed tract to be subdivided, providing that in consideration of the designation of said *subdivision* as an R-O Development and benefits accruing to such *owners* in the *subdivision* from such designations, and in recognition that purchasers of *lots* in the *subdivision* will rely upon the continuing existence of such *open spaces*, it is irrevocably agreed upon that such spaces will remain open with no buildings thereon, except as may be reasonably incidental to the use of the *open spaces* for the purpose designated. These restrictions shall

be binding upon the present *owners* of the proposed *subdivision* and *open spaces* and upon their successors in title and may be enforced by the *Zoning Administrator* or other appropriate public authority as provided in this Chapter or by the *owner* of any *lot* in the *subdivision* by suit for mandatory injunction or for damages.

- i. Said written instrument shall also contain a legal description of each *open space*, shall describe the use (if any) which the *owner* proposes and shall provide that if such *open space* is not maintained as agreed, the *owners* of a majority of the *lots* in the *subdivision* shall have the right to form an association which shall have the right to perform such maintenance at the expense of the members thereof.
- ii. Said written instrument shall further provide that if such *open spaces* shall be foreclosed and sold for nonpayment of taxes, said association of *lot owners* and anyone claiming under them shall be forever barred from asserting any right, title or interest in or to said *open spaces*.

(b) If the proposed R-O Development is established, the written instrument described in subsection b(3)(a) shall be recorded in the office of the Register of Deeds for Henderson County.

(c) Application to create an R-O Development shall be accompanied by the written instrument above referred to and a major site plan, in accordance with §42-331 (Major Site Plan Review). Applications to create an R-O Development shall comply with the applicable requirements for *subdivision* application.

c. Dimensional requirements in R-O Development. The dimensional requirements shall be reduced as follows for lots within the R-O development:

1. If the total *open space* pursuant to subsection b above is less than ten (10) percent of the area of the *tract* being subdivided, said requirement shall not be reduced at all;
2. If the total *open space* pursuant to subsection b above is at least ten (10) percent and less than 20 percent of the total *tract* being subdivided, each dimensional requirement shall be reduced ten (10) percent;

1. If the total *open space* pursuant to subsection b above is at least 20 percent and less than 30 percent of the total *tract* being subdivided, each dimensional requirement shall be reduced 20 percent;
 2. If the total *open space* pursuant to subsection b above is at least 30 percent of the total *tract* being subdivided, each dimensional requirement shall be reduced 30 percent.
- a. Nothing herein shall be deemed to require the County to accept any such *open space* that is dedicated to the public.

(10) R-A Residential Apartment.

- a. The purpose of the R-A Residential Apartment Development is to permit establishment of apartment developments in the R-40 District and to minimize any detrimental effects of such developments on existing land uses. Within an R-A Development, apartments and customary accessory buildings shall be permitted as per the requirements of §42-37 (Estate Residential District (R-40)) C (7) (Customary Accessory Building).
- b. R-A Developments may be located in the R-40 District subject to a finding by the *Zoning Board of Adjustment (ZBA)*, on advice and recommendation of the *Planning Director*, that certain conditions shall be met.
1. Location. Subject to the provisions of this section, an R-A Development may be established in an area contiguous to and abutting for at least 400 feet on either US 25, US 64, US 176, US 74, NC 191, NC 280, I-26 or Kanuga Road, or may be established on a minor street intersecting one of the aforementioned major streets within a distance not to exceed 1,500 feet from the point of intersection of the two (2) streets.
 2. Minimum Size. The minimum area for an R-A Development shall be one-and-one-half (1 ½) acres.
 3. Design Requirements. The proposed development of an R-A Development shall be considered in accordance with an overall plan which shall include provisions for:
 - (a) Landscaping. The proposed development shall be designed as a single architectural scheme with appropriate common landscaping.
 - (b) Parking. Parking space shall be provided within the development at a ratio of one-and-one-half (1 ½) spaces for each apartment unit.
 - (c) Area Regulations. No building shall be erected at a distance of less than 60 feet from the center line of any minor street on which the *lot* abuts, nor less than the required side or rear lot line setback of the adjacent district; however, in no instance shall the minimum side and rear lot line setback be less than 10 feet. The distance at the closest point between

any building or group of attached buildings shall not be less than 15 feet.

(d) Screening. A ten (10) foot evergreen planted buffer strip shall be provided wherever the development adjoins the boundary or property line of a *residential zoning district*.

(e) Traffic Circulation. The location of driveways, parking spaces and interior streets shall be designated on said plan.

c. Procedures for Application and Review. An applicant desiring to develop an R-A Development shall adhere to the following procedures:

1. Special Use Permit Application. The applicant shall submit to the Board of Commissioners a written application for a special use permit in accordance with §42-356 (Special Use Permit).

2. Development Plan. A copy of the development plan shall be submitted to the *Planning Director* for review and recommendations. The *Zoning Board of Adjustment (ZBA)* shall not issue a special use permit until it has received recommendations from the *Planning Director*.

(a) The development plan shall include the following information and supporting documentation:

i. The scale of the map, which shall be not less than one (1) inch to 50 feet with contours at five (5) foot vertical intervals showing pertinent topographical features.

ii. The location, use, plan and dimension of each building or structure to be constructed.

iii. The location, dimensions and arrangements of all access ways, entrances, exits, off-street parking facilities, streets and sidewalks.

iv. The locations, dimensions and arrangements of all *open spaces* and areas devoted to planting, lawns, trees or similar purposes, with a description including the height and density of all trees or planting to be used for screening.

v. The location and description of all facilities to be used for sewage disposal, water supply, *stormwater* drainage and all utilities.

(11) *Communication Facilities, Group 2* where such towers are limited to: (1) monopole towers, and (2) a height no greater than 100 feet (See also SR 9.3).

(12) Wind Mill/Turbine, Accessory \leq 40 ft (See SR 3.16).

(13) Wind Mill/Turbine, Accessory $>$ 40 ft (See SR 3.17)

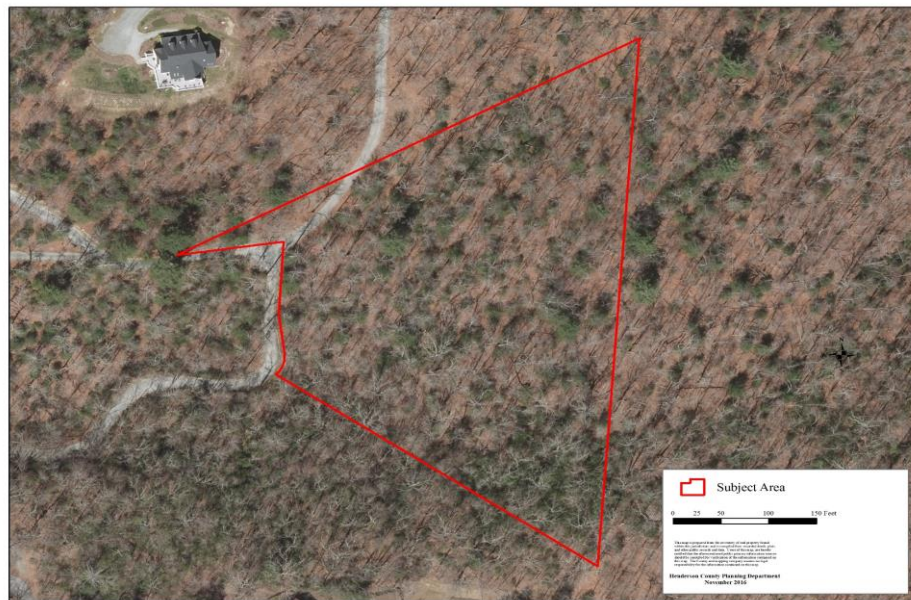
Rezoning #R-2016-04 Philip Fisher



Henderson County Planning Board
December 15, 2016

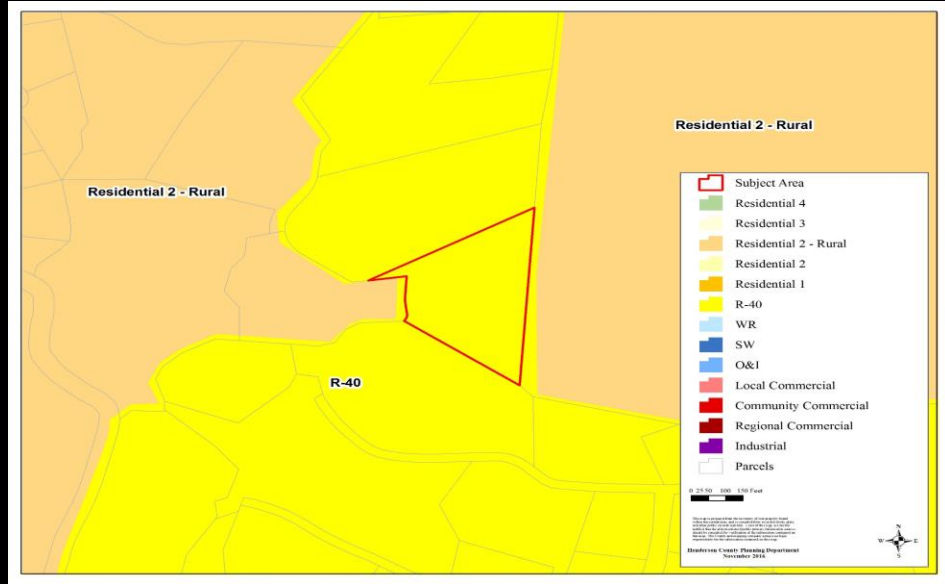
Henderson County Planning Department

Aerial Photo Map



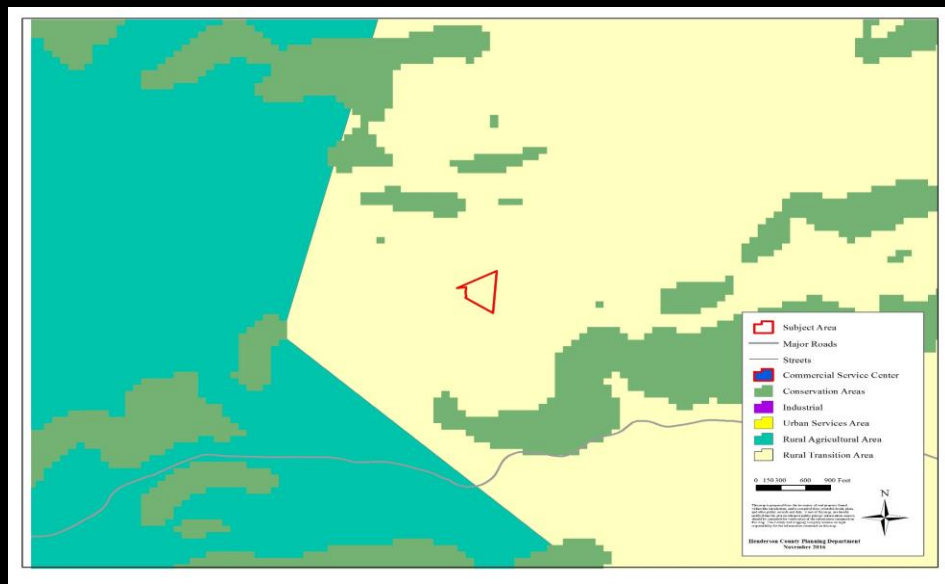
Henderson County Planning Department

Current Zoning Map



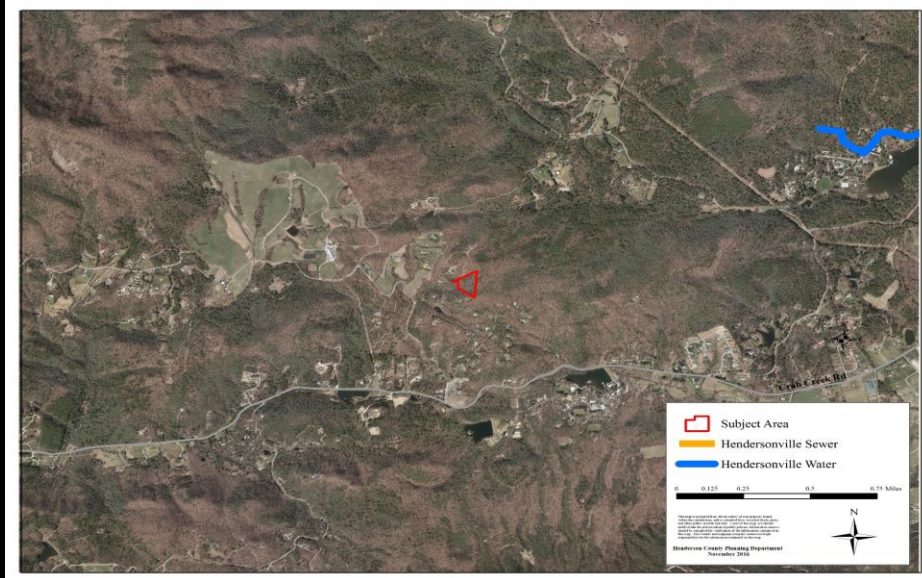
Henderson County Planning Department

2020 CCP Future Land Use Map



Henderson County Planning Department

Public Utilities



Henderson County Planning Department

Rezoning #R-2016-04

Questions

