

REQUEST FOR BOARD ACTION
HENDERSON COUNTY BOARD
OF COMMISSIONERS

MEETING DATE: February 4, 2019

SUBJECT: Request by East Flat Rock Grace Baptist Church to Close an Un-opened Right of Way and setting Public Hearing

PRESENTER: Autumn Radcliff – Planning Director

ATTACHMENT(S):
1) Petition to close Right of Way
2) Plat of area
3) Survey of area
4) Copy of N.C. G. S. 153A-241
4) Proposed Resolution of the Board of Commissioners

SUMMARY OF REQUEST:

East Flat Rock Grace Baptist Church has submitted a petition to close an un-opened right of way (ROW) and alley located on or adjacent to their property.

Threshold requirements: Under N.C. Gen. Stat. §153A-241, the Board can close any public road or easement which meets the requirements of that statute (copy attached). The requirements are:

- The road or easement must be located within the County and not within any municipality.
- The road or easement must not be under the control and supervision of the North Carolina Department of Transportation.

This property is located outside any municipality in Henderson County according to the County's GIS, and is not a part of the DOT.

Procedure required: Under §153A-241, the following procedure is required to be followed by the Board.

1. The Board must first adopt a resolution "declaring its intent to close the public road or easement and calling a public hearing on the question."
2. The public hearing be noticed in a way "reasonably calculated to give full and fair disclosure of the proposed closing".
3. The notice of the public hearing must be published in the newspaper once a week for three (3) weeks.
4. A copy of the resolution adopted above must be sent by registered or certified mail to

"each owner as shown on the county tax records of property adjoining the public road or easement who did not join in the request to have the road or easement closed".

5. A notice of closing and of the public hearing must be "prominently posted" in at least two places along the road or easement.
6. The Board must hold the public hearing, and hear "all interested persons" on the issue as to whether the closing "would be detrimental to the public interest or to any individual property rights."
7. After the hearing, the Board must be "satisfied that closing the easement is not contrary to the public interest".

If the Board is inclined to begin this process, a proposed resolution is attached.
County staff will present further information on this matter.

BOARD ACTION REQUESTED:

Approval of the resolution to begin the road/easement closing process and set public hearing.

Suggested Motion:

I move that the Board adopt the proposed Resolution and set the public hearing for Wednesday, March 20, 2019 at 9:00 AM.

COINER & HARRELSON, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

FRANCIS M. COINER 1923-2004
EDWARD L. HARRELSON

136 S. KING STREET, SUITE F
HENDERSONVILLE, NC 28792

WWW.EDWARDHARRELSON.COM
EDWARD@CHSLEGAL.COM

TELEPHONE: (828) 698-2345
FAX: (828) 692-2508

November 5, 2018

Curtis Griffin
Henderson County Property Addressing
100 N. King St.
Hendersonville, N.C. 28792

Re: Road Closure – Unopened Alley & Portion of 2nd Ave.

Dear Mr. Griffin:

I am writing on behalf of Grace Baptist Church regarding the permanent closure of a street and alley adjoining the Church property pursuant to N.C.G.S. 153A-241. Grace Baptist Church requests that the county permanently close those portions of 2nd Avenue between Spartanburg Hwy (U.S. 176) and Lamplighter Ln. (S.R. 1809) and an unopened alleyway extending from 2nd Avenue to Olde Jordan Street, as shown on an updated plat of survey by Freeland-Clinkscales & Associates. Grace Baptist Church is joined in this request by the adjacent property owners Jonathan Jones and Rebecca Orr.

A map of the streets to be closed is attached. The Church and Jones and Orr comprise all of the owners of property adjoining these unopened streets/alleys. 2nd Avenue is shown on a plat entitled "A Part of the MacMillan C. King Estate" dated July 20, 1925, which is a copy of a plat originally filed December 14, 1920 at Plat Book 1, at Page 23, now re-indexed at Plat Cabinet B, at Slide 11-A. On this map, U.S. Hwy. 176 as presently located appears to be named Fisher Street. Lamplighter Lane appears as Tabor Road or Appalachian Highway.

The property is further shown on a map entitled "C.F. Pack Subdivision, East Flat Rock, North Carolina" which is dated March 1, 1929 and which was recorded March 17, 1957 at Plat Book 5, at Page 116, now re-indexed at Plat Cabinet C, Slide 22-A. On this map, U.S. Hwy. 176 is identified as "State Highway" and Lamplighter Lane is shown as Old Spartanburg Highway. The unopened alley is shown on this plat as running between First Avenue and Second Avenue.

It is the desire of the Church and the two adjoining owners to permanently close 2nd Avenue and the alley above mentioned. It is the understanding of the parties that once closed, one half of each right of way will vest in the adjoining owner.

Yours sincerely,



Edward L. Harrelson
ELH/lb
Enclosures

**CONSENT TO REQUEST FOR STREET CLOSURE
PART OF 2ND AVENUE AND ALLEY, EAST FLAT ROCK**

We join in this petition to permanently close the unopened streets identified in the letter Of Edward L. Harrelson dated November 5, 2018.

GRACE BAPTIST CHURCH

P. O. Box 333
2703 Spartanburg Highway
East Flat Rock, NC 28739
(828) 692-4312
info@grace-baptist-church.org

Bruce Brown

BRUCE BROWN, TRUSTEE

Larry Carroll

LARRY CARROLL, TRUSTEE

Kenneth C. Walker

KENNETH C. WALKER, TRUSTEE

Jonathan Jones

JONATHAN JONES

Address: 1034 N JUSTICE ST

HENDERSONVILLE N.C. 28791

Phone: (828) 606-6701

E-Mail: JONATHAN JONES 25@YAHOO.COM

Rebecca Orr Harden

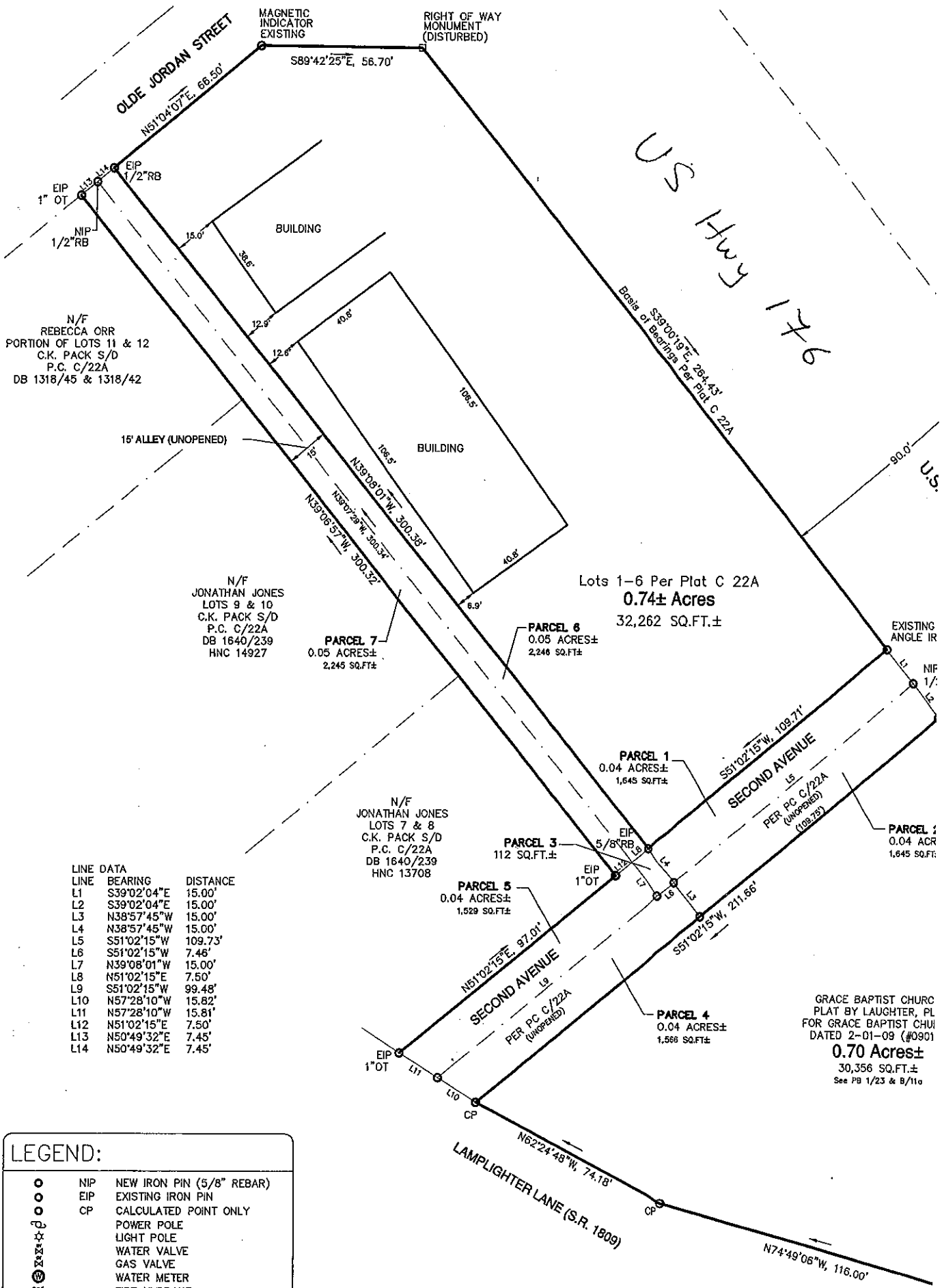
REBECCA ORR

Address: 706 Farmington Circle E

HENDERSONVILLE NC 28735

Phone: 828 243-7270

E-Mail: beckyharden999@gmail.com



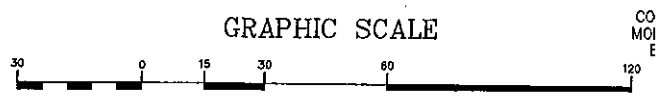
LINE DATA

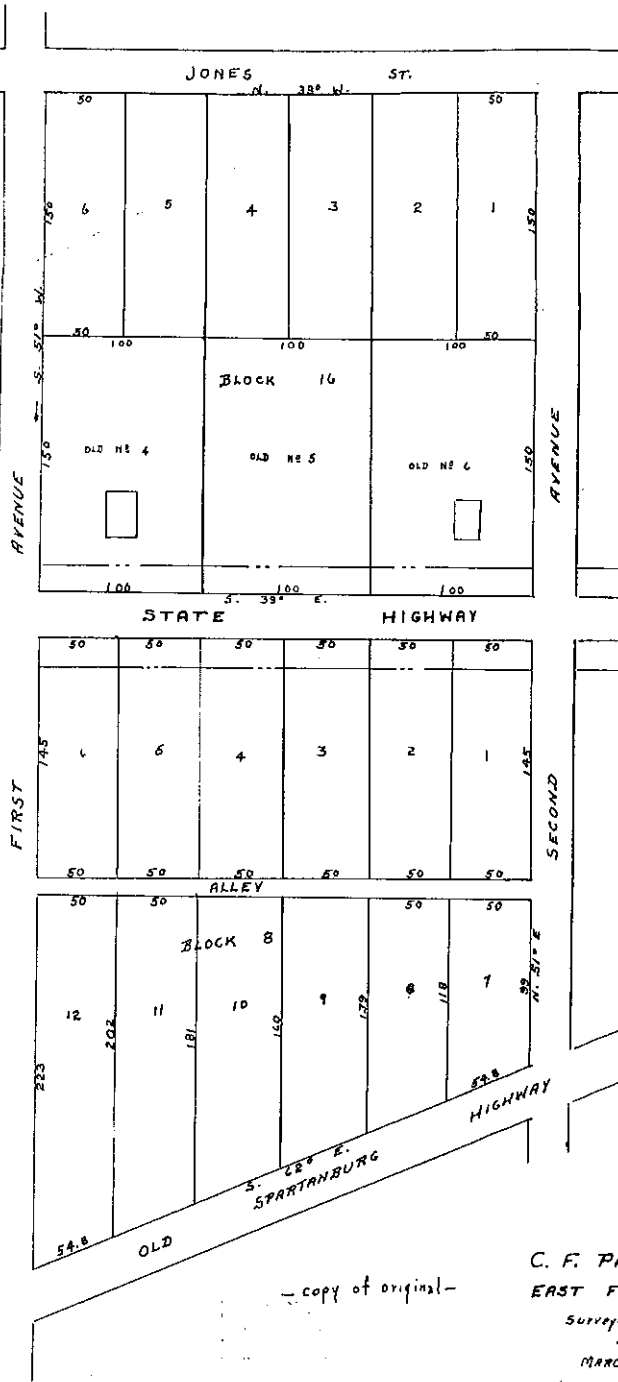
LINE	BEARING	DISTANCE
L1	S39°02'04"E	15.00'
L2	S39°02'04"E	15.00'
L3	N38°57'45"W	15.00'
L4	N38°57'45"W	15.00'
L5	S51°02'15"W	109.73'
L6	S51°02'15"W	7.46'
L7	N39°08'01"W	15.00'
L8	N51°02'15"E	7.50'
L9	S51°02'15"W	99.48'
L10	N57°28'10"W	15.82'
L11	N57°28'10"W	15.81'
L12	N51°02'15"E	7.50'
L13	N50°49'32"E	7.45'
L14	N50°49'32"E	7.45'

GRACE BAPTIST CHURCH
 PLAT BY LAUGHTER, PL
 FOR GRACE BAPTIST CHURCH
 DATED 2-01-09 (#0901)
0.70 Acres±
 30,356 SQ.FT±
 See PB 1/23 & B/110

LEGEND:

○	NIP	NEW IRON PIN (5/8" REBAR)
○	EIP	EXISTING IRON PIN
○	CP	CALCULATED POINT ONLY
⊙		POWER POLE
⊙		LIGHT POLE
⊙		WATER VALVE
⊙		GAS VALVE
⊙		WATER METER
⊙		FIRE HYDRANT
⊙		SANITARY SEWER MANHOLE
⊙		STORM DRAIN MANHOLE
⊙		CATCH BASIN
⊙		CLEANOUT





Church Prop

Lots 3-6
275/248 (256/130)

Lots 1-2
374/75

Filed and recorded in the Register of Deeds Office for Henderson County, N. C. this 17th day of March, 1929 at 4:30 o'clock P. M. in Book 9 at page 116
W. H. H. H. H.
 Registrar of Deeds

- copy of original -

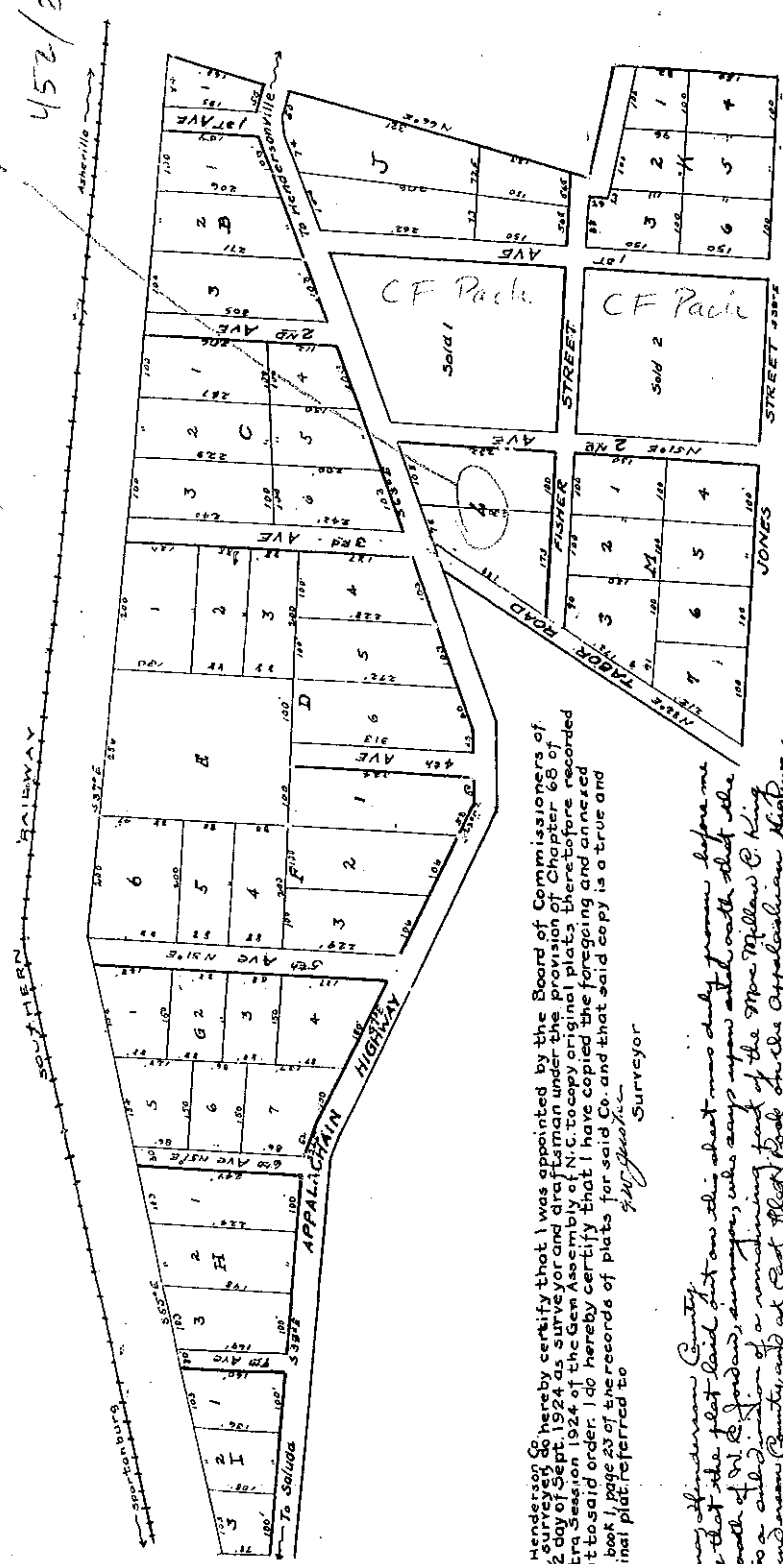
C. F. PACK SUBDIVISION
 EAST FLAT ROCK, N. C.
 Surveyed & Plotted by:
 S. S. Rozier
 MARCH 1, 1929
 Scale: 1" = 50'

S. S. Rozier
 State Surveyor

C/224

116

B/110a
 1/23
 452/225



State of North Carolina Henderson County
 George W. Justice, Surveyor do hereby certify that I was appointed by the Board of Commissioners of Henderson County on 2 day of Sept. 1924 as surveyor and do hereby certify that I have copied the foregoing and annexed in said Co. and pursuant to said order. I do hereby certify that I have copied the foregoing and annexed correct copy of the original plat referred to
 This 20th day July 1925
 G. W. Justice
 Surveyor

State of North Carolina Henderson County
 This is to certify that the plat laid out on this sheet was duly given before me this day in presence of M. E. Jordan, surveyor, who says upon oath that the said plat constitutes a valid partition of a remaining tract of the MacMillan C. King Estate lying in Henderson County at East Flat Rock in the Appalachian Highway and that the same is correct and was prepared from an actual survey of said property made by him on Dec. 10, 1920 and that the partition of the aforesaid tract was on and day 14th day of Nov.
 Therefore I do certify the validity of the same as provided Section 26 Page 181 Vol. 1 of the Consolidated Statutes of North Carolina.
 J. L. Rice
 Deputy Clerk of Superior Court

State of North Carolina
 Henderson County
 Filed for record at 2:30
 O'clock P.M. this 14th day of
 Dec. 1920 and recorded in
 book 1 page 23
 W. G. Ewing,
 Reg. of Deeds.

A PART
 of the
MacMillan C. King Estate
 EAST FLAT ROCK, HENDERSON CO. N. C.
 Scale 1"=300'

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

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

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

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

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

**Henderson County
North Carolina**

Before the Board of Commissioners

Resolution on Proposed Road or Easement Closing

BOARD OF COMMISSIONERS ENACTMENT 2019-____

WHEREAS, N.C. Gen. Stat. §153A-241 allows for the closing by a county of any public road or easement located within the county but not within a municipality; and

WHEREAS, the Board of Commissioners of Henderson County has received a petition from East Flat Rock Grace Baptist Church for the closing of an unopened Right of Way and alley, as shown as the yellow highlighted area indicated on the attached copy of plat; and

WHEREAS, the Board of Commissioners of Henderson County, following the procedures required by §153A-241, are adopting this Resolution declaring their intent to possibly close the public road or easement, and of their intent to hold a public hearing on the question.

NOW, THEREFORE, BE IT RESOLVED as follows:

1. The Board of Commissioners shall hold a public hearing on the 20th day of March, 2019, at 9:00 o'clock a.m., on the issue of whether to close the public road/easements noted above.
2. A notice of this public hearing, giving full and fair disclosure of the proposed closing, shall be published once a week for three (3) weeks.
3. A copy of this notice shall be sent by registered or certified mail to each owner as shown on the county tax records of property adjoining the public road or easement who did not join in the request to have the road or easement closed.
4. A copy of this Resolution and the public hearing notice shall be prominently posted in at least two places along the road or easement.

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5. At the conclusion of the public hearing, the Board of Commissioners will determine whether or not closing the public road or easement is contrary to the public interest and (in the case of a road) whether any individual owning property in the vicinity of the road or in the subdivision in which it is located would thereby be deprived of reasonable means of ingress and egress to their property. If the Board finds that such closing would not be contrary to the public interest and that, in the case of a road, that no individual would be deprived of reasonable means of ingress or egress, the Board may grant the closing of the public road or easement.

Adopted this the 4th day of February, 2019.

HENDERSON COUNTY BOARD OF COMMISSIONERS

By: _____
GRADY HAWKINS, Chairman Attest:

TERESA L. WILSON, Clerk to the Board