

REQUEST FOR BOARD ACTION

HENDERSONCOUNTY BOARD OF COMMISSIONERS

MEETING DATE: August 5, 2019

SUBJECT: Public Hearing for Conditional Rezoning Application #R-2019-02-C, Owen, Residential Two (R2) to Industrial Conditional District (I-CD)

PRESENTER: Matt Champion, Project Development Planner

ATTACHMENTS:

1. Current Aerial Map
2. 2001 Aerial Map
2. Staff Report
3. Site/Master Plan
4. Certification of Public Hearing Notification
5. Resolution of Consistency
6. Planning Staff PowerPoint Presentation

SUMMARY OF REQUEST:

Conditional Rezoning Application #R-2019-02-C was initiated on March 18, 2019 and requests that the County conditionally rezone approximately 5 acres of land from Residential Two (R2) to an Industrial Conditional District (I-CD). The project consists of 2 parcels (PIN(s): 9661-24-1053 & a portion of 9661-13-9920) located off Whispering Hills Drive (SR 1625). Amber Nicole Owen is the property owner and applicant.

The applicant is proposing to expand an existing legal nonconforming commercial use onto a recently acquired abutting parcel of land as identified on the Site Plan. The proposal includes, in addition to the existing indoor and outdoor storage areas, an outdoor commercial vehicle storage lot and an 80' by 50' garage for indoor equipment storage. The attached Current Aerial Map identifies the existing commercial use parcel as "Parcel A" and the proposed expansion area as "Parcel B." Conditional rezoning's allows for the Board of Commissioners to place conditions on the property to address community concerns and make the proposed development compatible with adjacent uses.

The Technical Review Committee (TRC) reviewed the application on May 7, 2019 and forward the rezoning request to the Planning Board with conditions listed in the staff report.

The Planning Board reviewed the conditional rezoning request at its May 16, 2019 and June 20, 2019 meetings. On June 20th following Board discussion, a motion to forward an unfavorable recommendation was unanimously passed. The Planning Board did provide conditions to be forwarded onto the Board of Commissioners that the applicant provide or address noise concerns, building setbacks, aesthetics of the site, access to and from the site, limiting uses, and restricting hours of operations.

PUBLIC NOTICE:

Before taking action on the application, the Board of Commissioners must hold a public hearing. In accordance with §42A-303 and §42A-346 (C) of the Henderson County Land Development Code and State Law, notice of the August 5, 2019 public hearing regarding rezoning application #R-2019-02-C was published in the Hendersonville Lightning on July 24th and July 31st. The Planning Department sent

notices of the hearing via first class mail to the owners of properties within 400 feet of the Subject Area on July 25, 2019 and posted signs advertising the hearing on July 25, 2019.

BOARD ACTION REQUESTED:

Before taking action on the rezoning request, the Board of Commissioners must hold a public hearing. A suggested motion is provided.

Suggested Motion:

I move that the Board (approve, approve with conditions, or deny) conditional rezoning application #R-2019-02-C to rezone the Subject Area to an Industrial Conditional District (I-CD) based on the recommendations of the Henderson County Comprehensive Plan, and with any conditions stated in the staff and master plan report and additional conditions as discussed, and;

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

Conditional Rezoning R - 2019 - 02C

Applicant: Amber Owen

Total Area: 5.00 acres

Current Zoning: R2

Current Aerial Map



0 37.5 75 150 225 300 Feet

This map is prepared from the inventory of real property found within this jurisdiction, and is compiled from recorded deeds, plats, and other public records and data. Users of this map are hereby notified that the aforementioned public primary information sources should be consulted for verification of the information contained in this map. Henderson County and the mapping company

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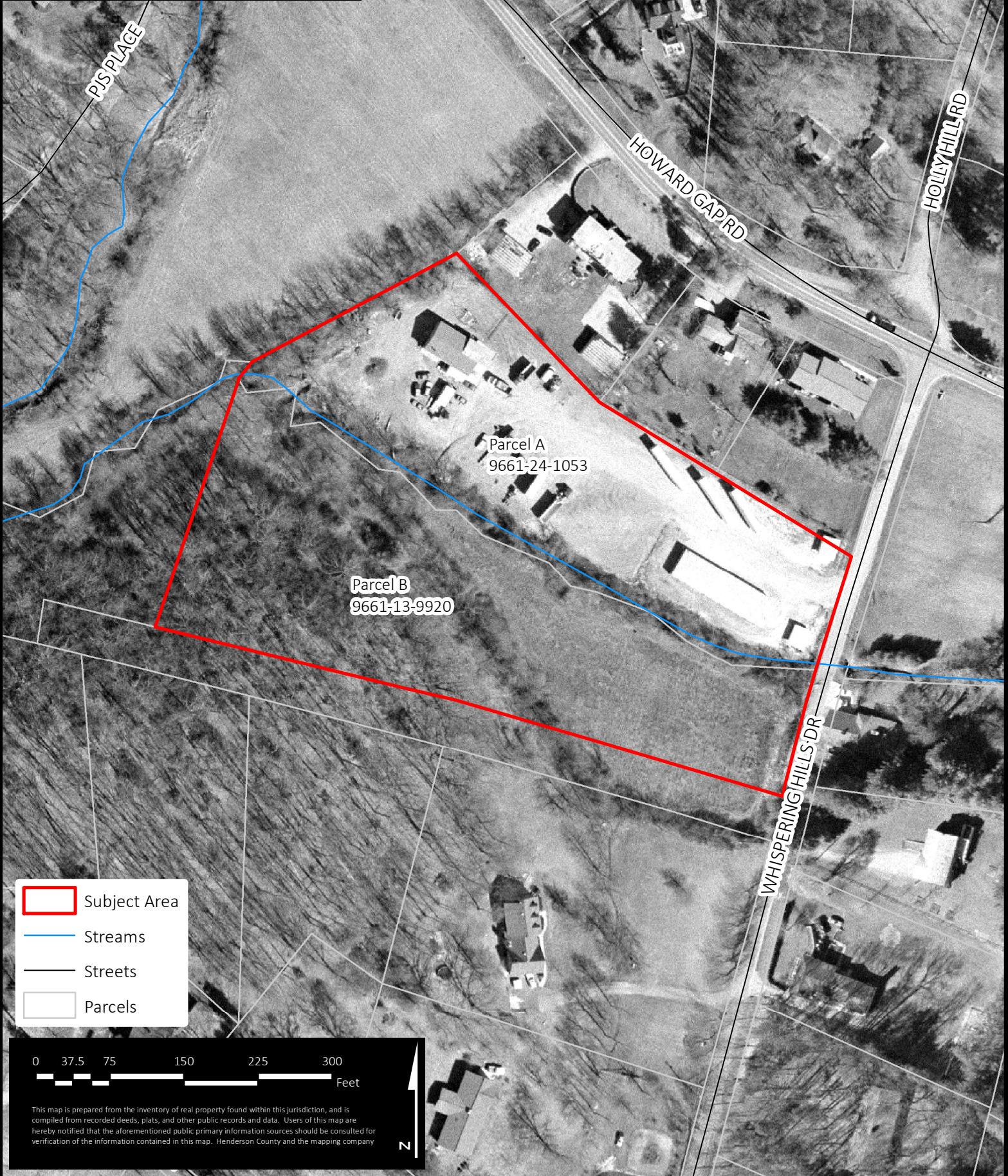
Conditional Rezoning R - 2019 - 02C





Applicant: Amber Owen

Total Area: 5.00 acres

Current Zoning: R2

2001 Aerial Map



-  Subject Area
-  Streams
-  Streets
-  Parcels



This map is prepared from the inventory of real property found within this jurisdiction, and is compiled from recorded deeds, plats, and other public records and data. Users of this map are hereby notified that the aforementioned public primary information sources should be consulted for verification of the information contained in this map. Henderson County and the mapping company



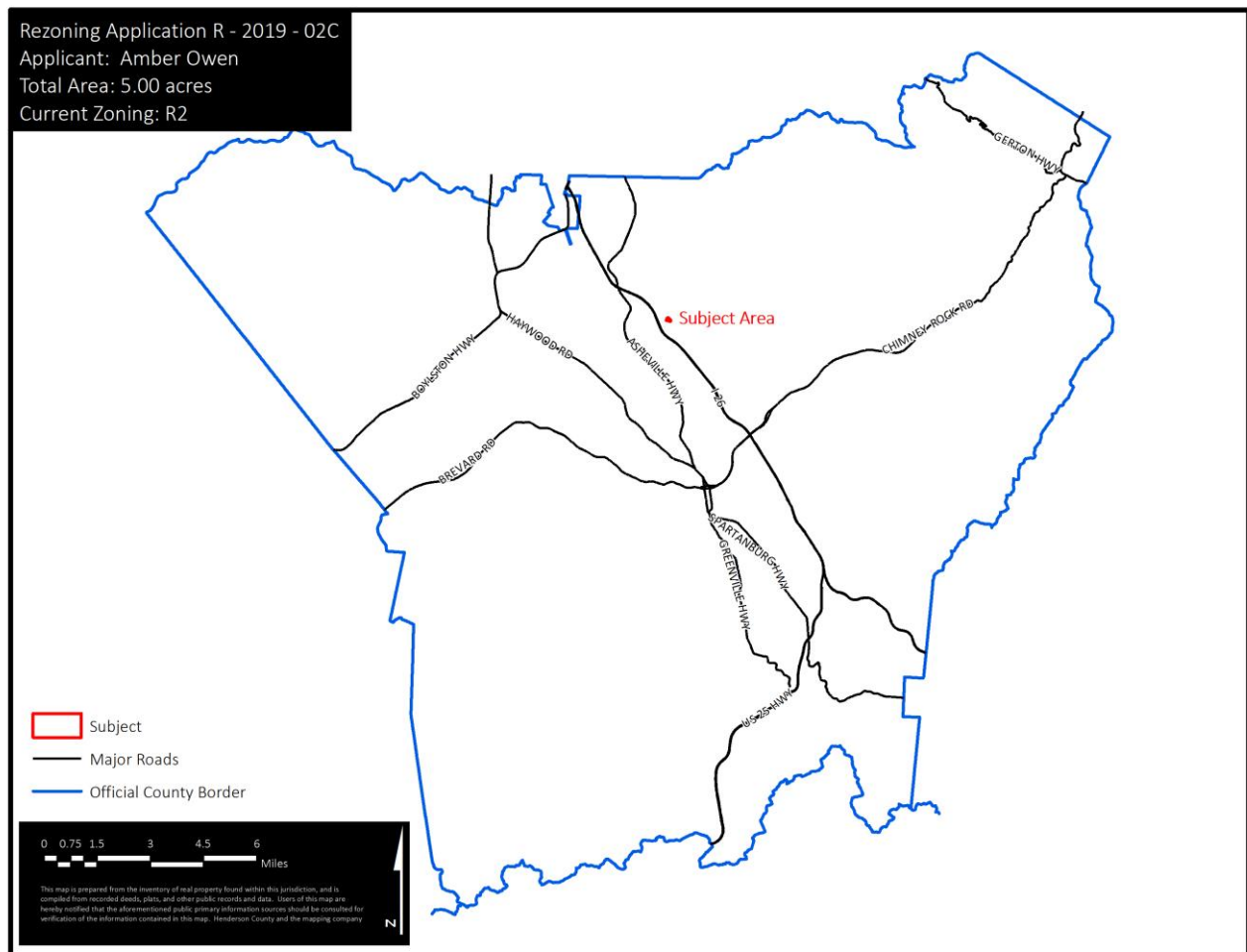
Henderson County Planning Department Staff Report
Conditional Rezoning Application #R-2019-02-C (R2 to I-CD)

Owner & Applicant:
Amber Owen

1. Conditional Rezoning Request

- 1.1. **Applicant/Owner:** Amber Owen
- 1.2. **PINs:** 9661-24-1053 & a portion of 9661-13-9920
- 1.3. **Request:** Rezone subject area from a Residential Two (R2) zoning district to an Industrial Conditional (I-CD) zoning district.
- 1.4. **Size:** Approximately 5.00 acres
- 1.5. **Location:** The subject is located on Whispering Hills Dr. off Howard Gap Rd (SR 1006)

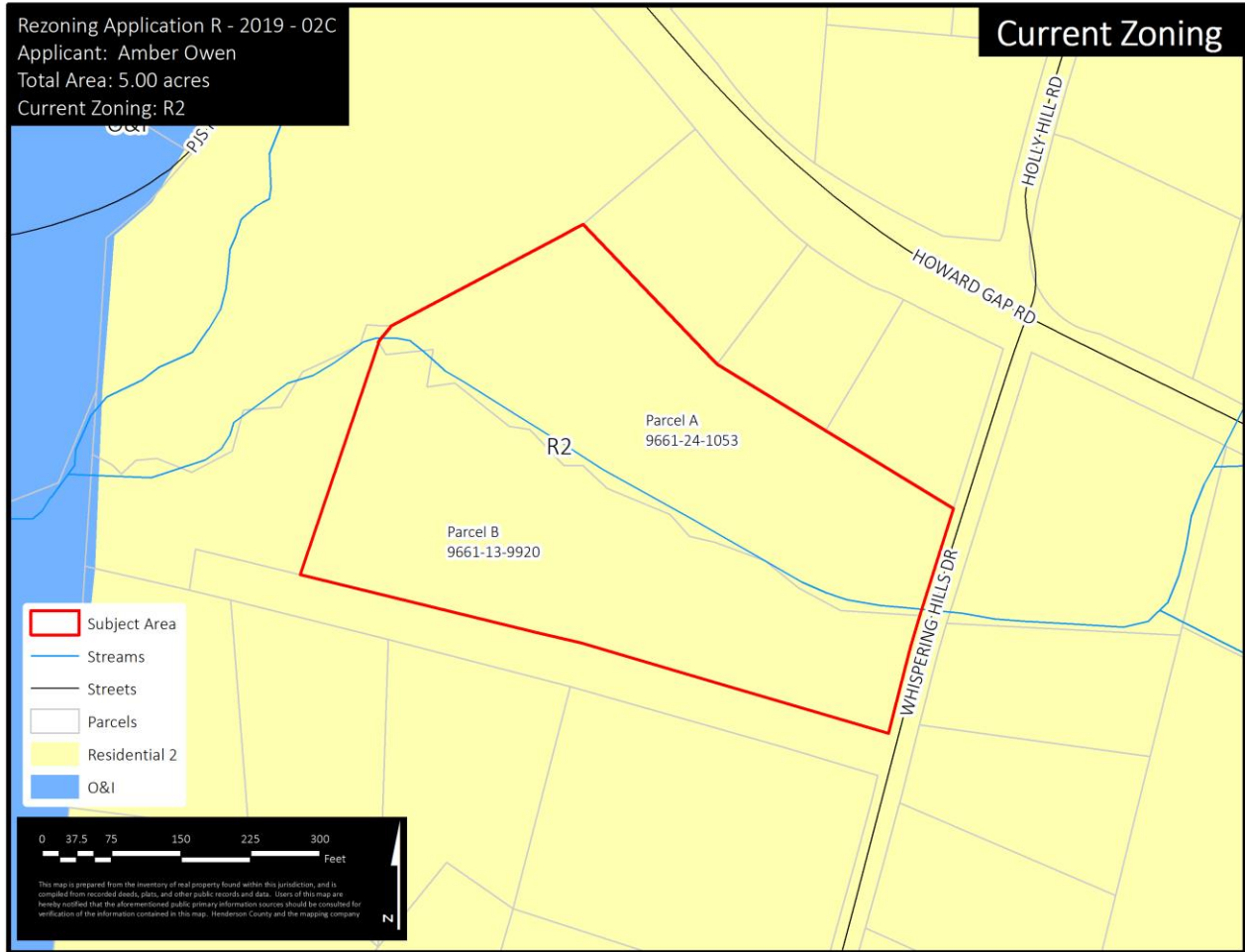
Map A: County Context



Map B: Aerial Image



Map C: Current Zoning



2. Current Zoning

2.1. **Application of Current Zoning:** The subject area is currently zoned Residential Two (R2). The subject area was first zoned Open Use (OU) prior to a 2001 map amendment initiated by Ms. Janis Moore, R-05-01, requesting that Henderson County rezone over 100 separate property owners from OU to a residential zoning district north of Brookside Camp Road, along Howard Gap Road. Planning Board determined the request was too large and too disconnected from other zoning districts to be considered as a standard zoning map amendment application but warranted a comprehensive zoning study of the area. The outcome from the Howard Gap/Brookside Camp Road Area Zoning Study rezoned the subject area from OU to a R-15, Medium-Density Residential District. When the LDC was adopted in September of 2007, property previously zoned R-15 was changed to the current R2 district.

2.2. **Adjacent Zoning:** The subject area is surrounded by Residential Two (R2).

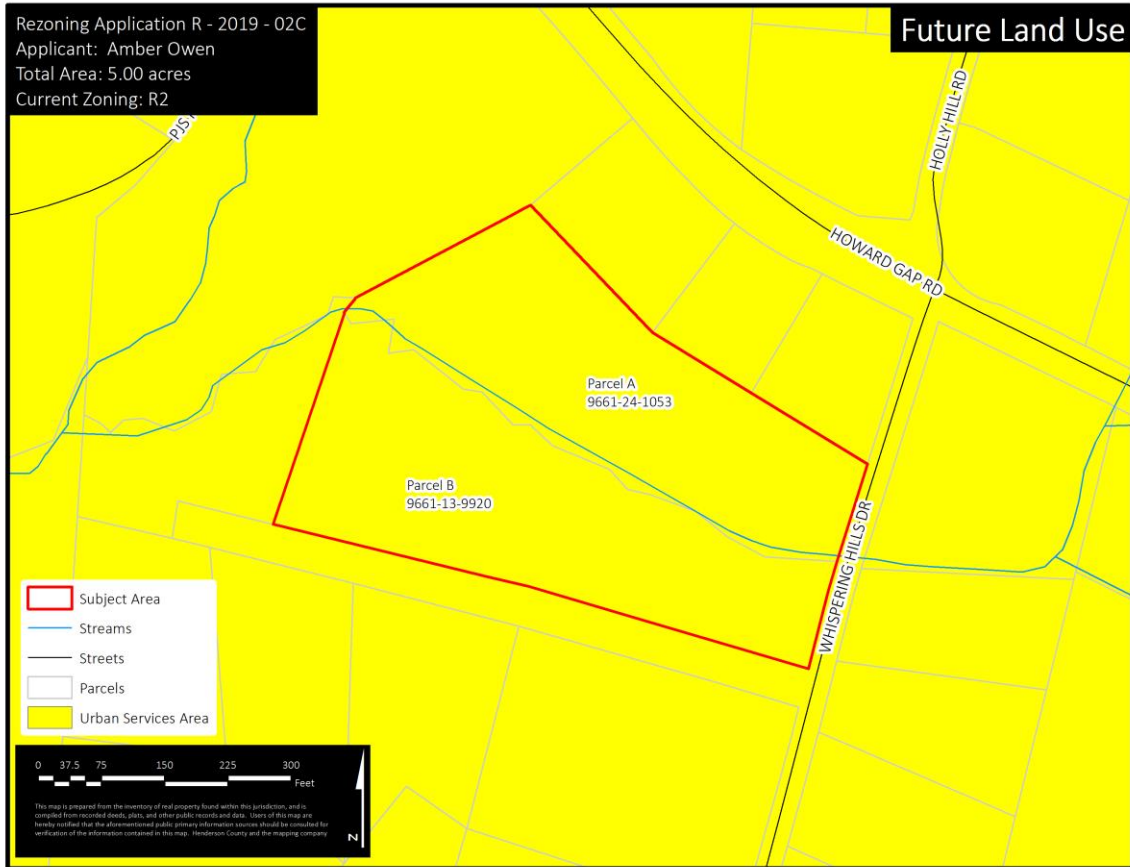
2.3. **District Comparison:**

2.3.1. **Residential Two (R2):** The purpose of Residential District Two (R2) 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* consistent with the recommendations of the *Comprehensive Plan*. It is also the intent of this district to allow for flexibility in the continuation of existing nonresidential *uses*. This general *use district* is typically meant to be utilized in areas designated as Transitional (RTA) in the *Comprehensive Plan*. (LDC §42-28).

2.3.2. **Industrial Conditional Zoning District (I-CD):** 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) (LDC § 42-36). “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” (Chapter 42, Land Development Code §42-45). Conditions may be imposed in the furtherance of the purpose of the LDC and the recommendations of the County *Comprehensive Plan*.

Map D: County Comprehensive Plan Future Land Use Map



3. The Henderson County Comprehensive Plan (CCP)

3.1. The CCP Future Land Use Map identifies the subject area as being in the Urban Services Area (USA). (CCP, Pgs. 128, 129 & Appendix 1, Map 24). (See Map D).

3.1.1. **Urban Services Area:** 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. The USA will essentially contain all existing and future industrial developments, which will be the future focus of economic development activities” (CCP, Pg. 129).

4. Current Uses of Subject Area and Adjacent Properties

4.1. **Subject Area Uses:** The subject area is composed of two separate parcels, PIN(s) 9661-24-1053 & a portion of 9661-13-9920. PIN 9661-24-1053, Parcel A, currently contains an existing trucking and hauling business that has been in operation since the purchase of the property in 1999. PIN 9661-13-9920, Parcel B, is currently vacant and was acquired by the property owners in 2018.

4.2. **Adjacent Area Uses:** There are residential, agricultural, waste water treatment, and vacant land uses surrounding the subject.

- 4.3. **Proposed Use:** The applicant is proposing to use the vacant property as a storage yard for equipment utilized with the established existing business. The conditional zoning request would limit the existing use located on Parcel A from expanding under the legal nonconforming classification. Only the uses shown on the site plan are allowed. If the applicant wishes to make any alterations to the site plan after approval, the applicant would have to go through another conditional zoning process. If the conditional zoning request is denied, the applicant will still be able to operate on Parcel A under the legal nonconforming classification.
5. **Water and Sewer:** The subject is served by individual water and a North Carolina Department of Environmental Quality approved domestic wastewater system. The proposed garage building is for storage only and will not be served by water or sewage disposal. The Mud Creek Interceptor project for the Cane Creek Water and Sewer District is proposed to be built in this area and will be within two parcels to the west of the subject.
6. **Flood Hazard Areas:** The subject area is not located within a flood hazard area.
7. **Landscaping:** The subject area will be required to install a B1 buffer on all property boundaries that border a residential zoning district. The B1 buffer requires a width a 20' with 1 large and 2 small deciduous trees, and 2 large and 6 small evergreen trees per 100 linear feet (LDC §42-168).
8. **Nonconforming Uses:** Parcel A of the subject area is classified as nonconforming according to Chapter 42 of the Land Development Code (§42-299). Legally established commercial and industrial uses/structures within the former Open Use (OU) zoning district that were made nonconforming by the adoption of the Land Development code shall be allowed to make improvements, expansions, repairs, and reconstructed with the applicable dimensional requirements under the current zoning district. Parcel B does not fall within the nonconforming classification because it is vacant and was acquired after the adoption of the Land Development Code.
9. **Perennial and Intermittent Surface Water Buffer:** All built upon areas shall be a minimum of 30 feet landward of all perennial and intermittent surface water as defined in LDC §42-145.
10. **Staff Comments**
- 10.1. **The CCP:** The CCP Future Land Use Map (See Map D) places the Subject Area in the Urban Services. The text and map of the CCP suggest that the Subject Area would be suitable for residential development.
- 10.2. **Zoning History:** Open Use to R-15: November 12, 2002, R2: September 19, 2007.
- 10.3. **Nonconforming:** The Parcel A of the subject area that contains the existing use can continue to operate under the nonconforming classification as defined in Chapter 42 of the Land Development Code (§42-299).
- 10.4. **Spot Zoning:** North Carolina courts do not characterize small-scale rezonings as a quasi-judicial process. “As a general rule, legislative decisions regarding zoning – decisions to adopt, amend, or repeal a zoning ordinance – are presumed to be valid, and the judiciary

largely defers to the judgment of local elected officials on such matters. (“Spot Zoning” David Owens, NC School of Government, 2014)

10.5. **Split Zoning:** The rezoning, if approved, will result in a split zoned parcel with approximately 0.93 acres remaining in Residential 2 (R2) zoning district.

10.6. **Public Comments:** Staff received five (5) letters of support from neighboring property owners and several complaints of applicants using property prior to approval.

11. Recommended Conditions

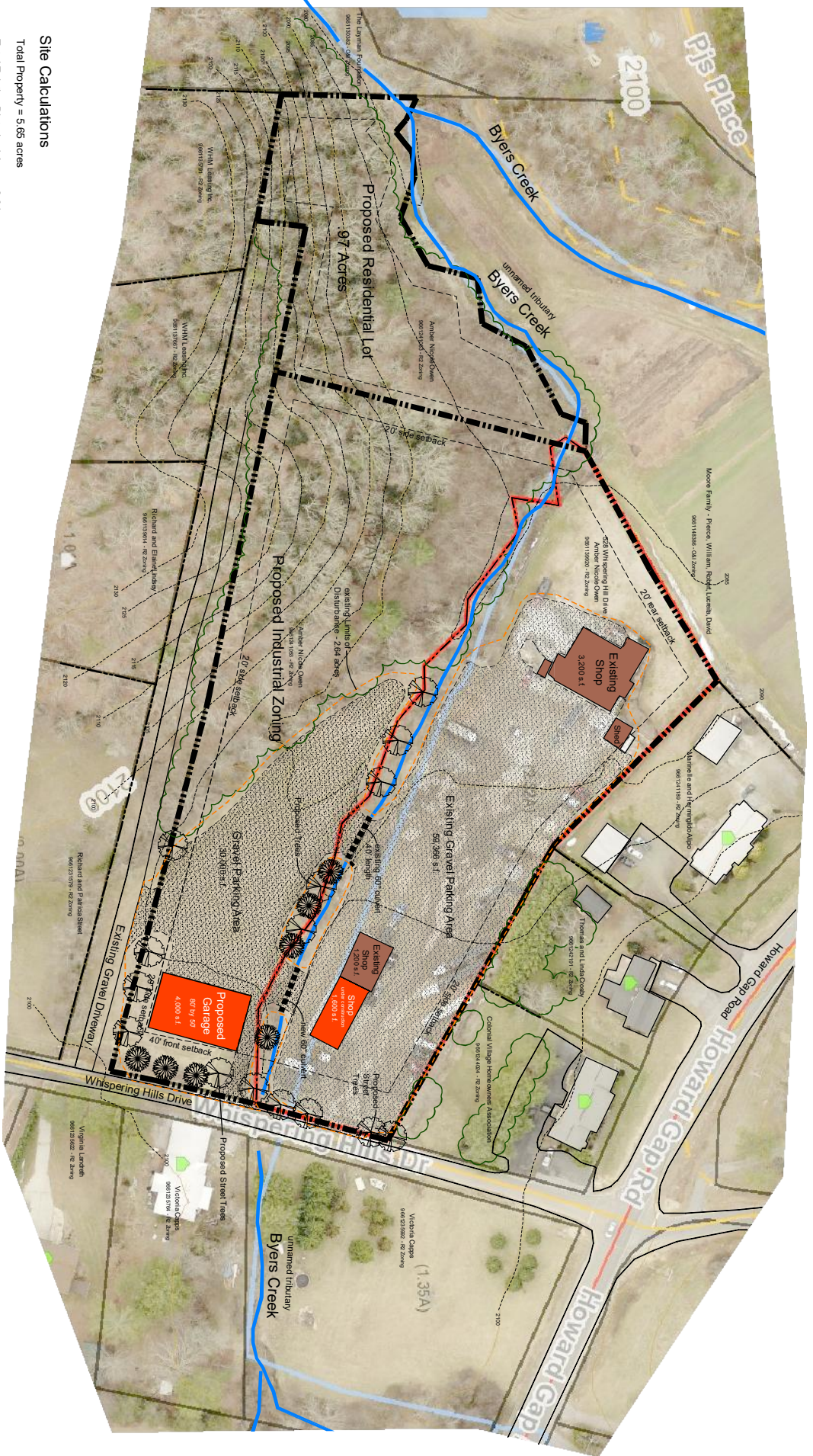
11.1. **NCDOT Driveway Permit:** NCDOT does not require a driveway permit

12. Technical Review Committee Review

12.1. The TRC reviewed the application at its meeting on May 7, 2019 and found that all technical requirements were met or have been added as a condition of approval.

13. Planning Board Recommendations

13.1. The Planning Board reviewed the application at its meeting on May 16, 2019 and made a motion to table the item until their regularly scheduled meeting on June 20, 2019. During the June 20, 2019 meeting the Planning Board made the motion to forward an unfavorable recommendation to the Board of Commissioners. The motion passed by a unanimous vote. The Planning Board did recommend several conditions to be considered by the Board of Commissioners if the conditional rezoning request was approved. The recommended conditions include that the applicant provide or address noise concerns, building setbacks, aesthetics of the site, controlled access to and from the site, limiting uses, and restricting hours of operations.



Site Calculations

- Total Property = 5.66 acres
- Total Existing Disturbed Area = 2.64 acres
- Total New Disturbed Area = 0 acres
- Percentage of Property Disturbed = 47%
- Total Existing Impervious Area = 1.52 acres
- Total New Impervious Area = .78 acres
- Total Property Impervious Area = 2.30 acres
- Percentage of Property Impervious Area = 41%



ISSUE DATE:	April 8, 2018
DESIGNED BY:	DR
DRAWN BY:	SR
CHECKED BY:	SR
PROJECT NUMBER:	12
SHEET NUMBER:	12

Designed By:

cds Creative Development Solutions

landscape architecture | land planning | community and resort design

1003 4th avenue west, hendersonville, north carolina 28739

Sheet:	Project:
Site Plan	Owen Property
	528 Whispering Hills Drive
	Pin #9661139520 and 9661241033
	DEED BOOK 3158, PAGE 222

Owner:	Other Consultants:
Amber Nicole Owen	

Owner:	P.O. Box 2161
	Fletcher, NC 28732

Other Consultants:

Certification of Notice of Public Hearing

In accordance with NCGS 153A-343 the Planning Department certifies notice of the August 5th, 2019 hearing regarding Rezoning Application #R-2019-02-C were:

1. Submitted to the Hendersonville Lightning on July 17, 2019 to be published on July 24, 2019 and July 31, 2019 by Matt Champion;
2. Sent, via first class mail, to the owners of properties adjacent to the Subject Area(s) on July 25, 2019 by Matt Champion;
3. Signs were posted on the Subject Area(s) on July 25, 2019 by Eric Warren.

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

1. Matt Champion
2. Eric Warren

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

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

and State, do hereby certify that

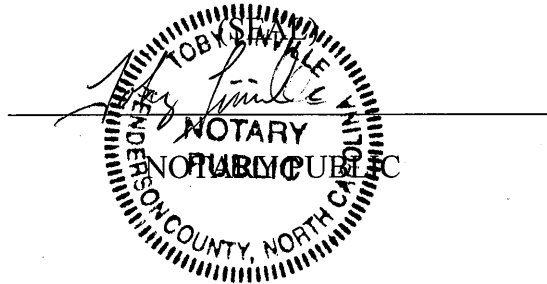
 Matt Champion and Eric Warren ,

personally appeared before me this day.

WITNESS my hand and notarial seal, this the 25 day of July , 20 19 .

My commission expires:

 5-25-21





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-2019-02-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 August 5, 2019; 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-2019-02-C, Owen) and finds that it is 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 5th day of August, 2019.

HENDERSON COUNTY BOARD OF COMMISSIONERS

BY: _____
GRADY HAWKINS, Chairman

ATTEST:

Teresa Wilson, Clerk to the Board

[COUNTY SEAL]

Conditional Rezoning #R-2019-02-C Owen



Board of Commissioners
August 5, 2019

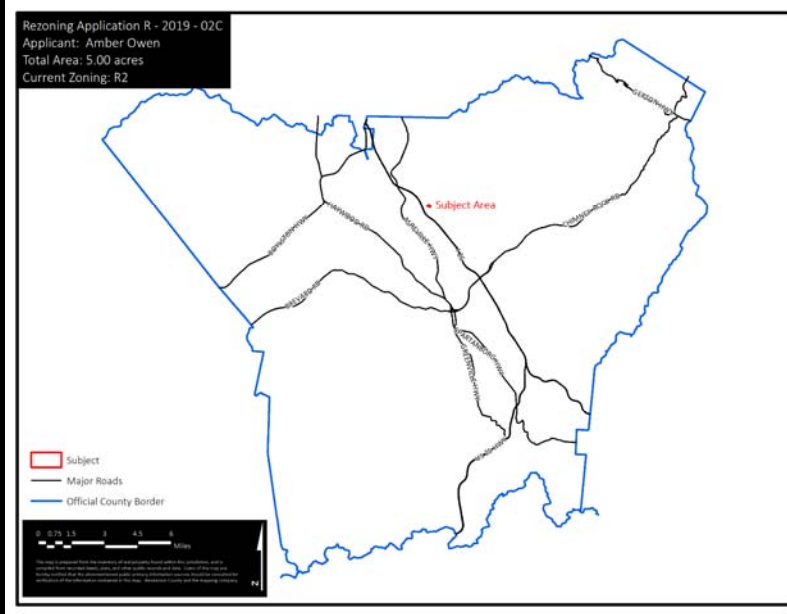
Henderson County Planning Department

Public Hearing Notice

- Legal Ad was published in the Hendersonville Lightning on July 24th and July 31st
- The property was posted on July 25th
- Letters were mailed to property owners within 400 feet of the Subject Area on July 25th

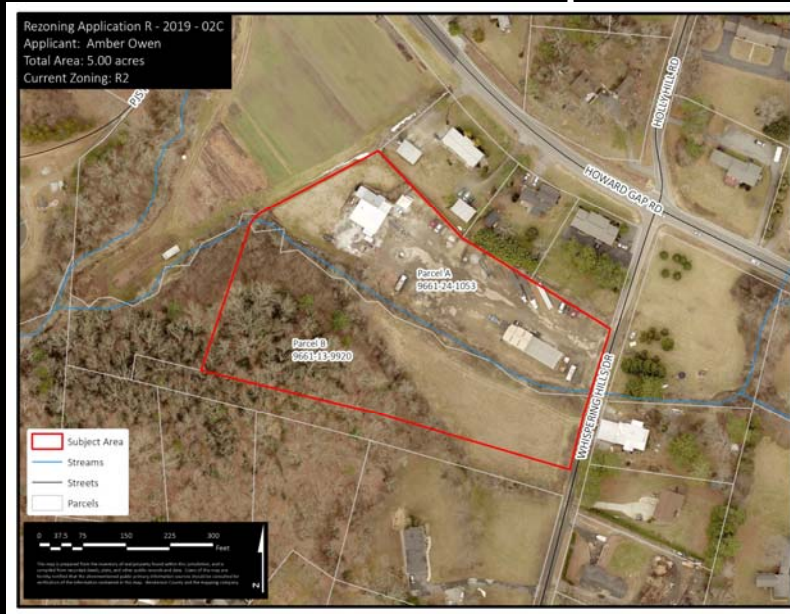
Henderson County Planning Department

County Context Map



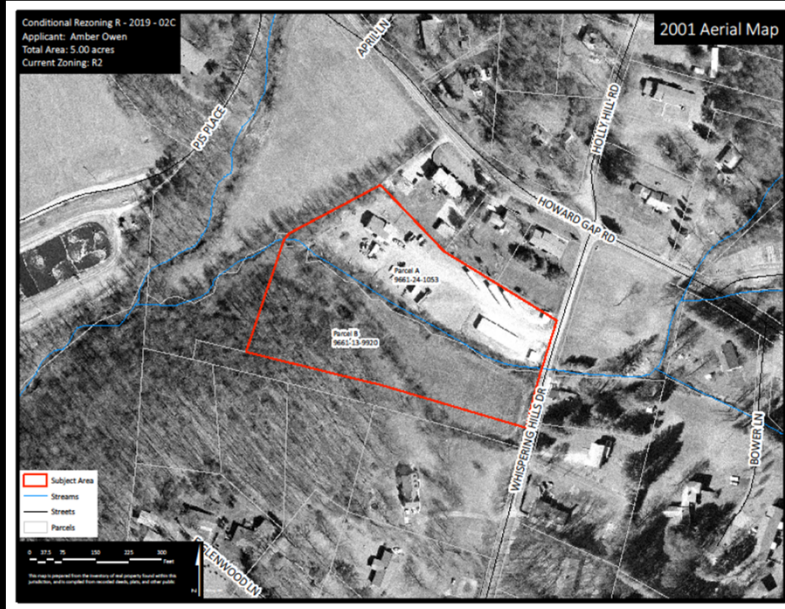
Henderson County Planning Department

Current Aerial Map



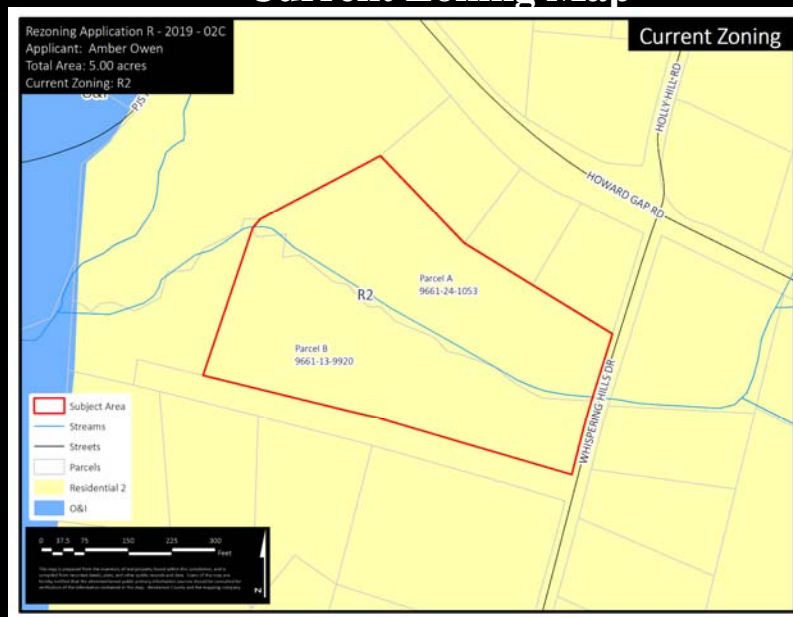
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2001 Aerial Map



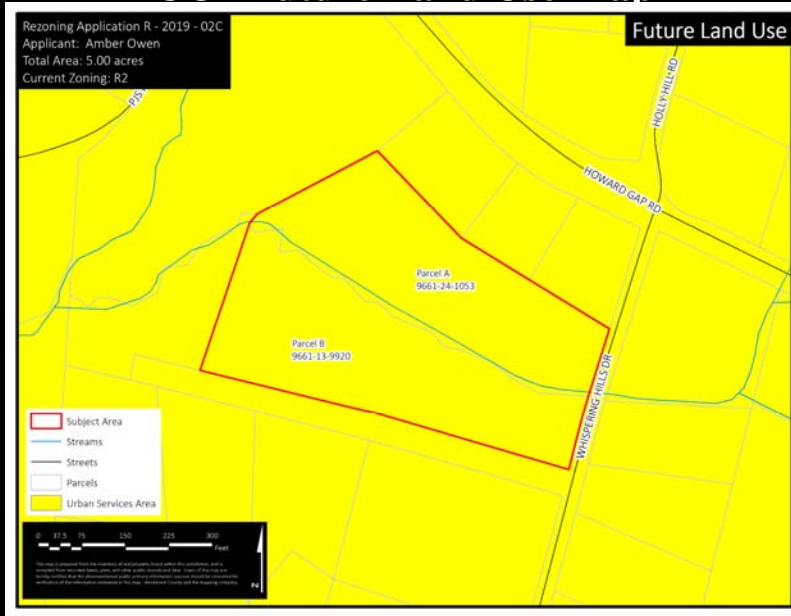
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Current Zoning Map



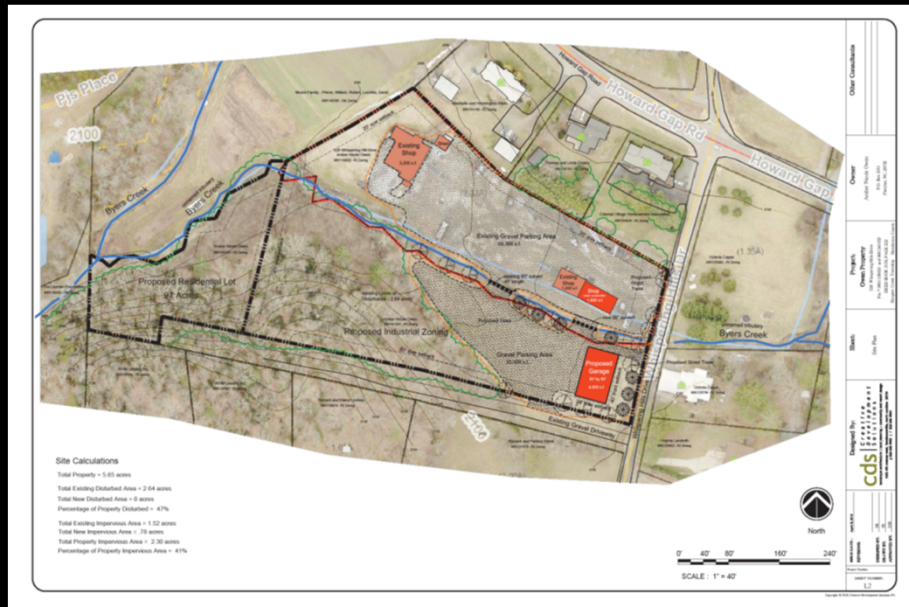
Henderson County Planning Department

CCP Future Land Use Map



Henderson County Planning Department

Site Plan



Henderson County Planning Department

Site Plan Summary

- Expansion of the existing parking and vehicle storage area (Parcel A) onto the southern parcel (Parcel B)
- 80' x 50' garage for vehicle and equipment storage
- Parcel B has separate access to Whispering Hills Dr (SR 1625)

Henderson County Planning Department

Property Owners in Support of Application



Henderson County Planning Department

Flood Hazard Map



Henderson County Planning Department

Subject Area Photos



Henderson County Planning Department

Subject Area Photos



Henderson County Planning Department

Subject Area Photos



Henderson County Planning Department

Conditional Rezoning's

Conditional rezoning's are:

- Legislative decisions
- Require a site specific plan (only what is on the plan is allowed)
- The BOC may require additional conditions of the development, provided the developer agrees to those conditions
- Process provides protection to adjacent properties

Henderson County Planning Department

Conditional Rezoning's

- Conditions required by the LDC are listed in the staff report
- Additional conditions recommended for consideration and requests made by the TRC and Planning Board are also listed in the staff report

Henderson County Planning Department

Conditional Rezoning #R-2019-02-C

Questions



Henderson County Planning Department