

# REQUEST FOR BOARD ACTION

## HENDERSON COUNTY BOARD OF COMMISSIONERS

- MEETING DATE:** August 18<sup>TH</sup>, 2021
- SUBJECT:** Public Hearing to close portion of Old Hendersonville Road Right of Way
- PRESENTER:** Matt Champion, Zoning Administrator  
Autumn Radcliff, Planning Director
- ATTACHMENTS:**
- (1) Site Map depicting proposed Rights of Way to be abandoned, and existing conditions
  - (2) North Carolina General Statute 153A-241
  - (3) Applicants Petition for Road Closures
  - (4) Order to permanently close portion of Old Hendersonville Road
  - (5) PowerPoint

### SUMMARY OF REQUEST:

Planning and Property Addressing staff have received the attached petition to abandon NCDOT maintenance and close a portion of Old Hendersonville Road right-of-way. Under North Carolina General Statute (NCGS) 153A-241, counties have the power to close any public road or easement not within a city, except public roads or easements for public roads under control of the Department of Transportation. To close any road, the Board must:

- Vote to adopt a resolution declaring its intent to close the public road or easement.
- Call and notice a public hearing on closing the road or easement, with notice "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".
- Hold the public hearing, where the Board must "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".
- Then, if the Board "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."
- File a copy of the Board's order with the Register of Deeds.

### BOARD ACTION REQUESTED:

Staff recommends approval of closing portion of Old Hendersonville Road.

### Suggested Motion:






I move that the Board approve closure of the rights-of way and certify the Order of Closure.

ROW Closure for Portion of  
Old Hendersonville Rd  
Applicant: Rodney NCDOT  
Township: Hoopers Creek

# Aerial Map



Old Hendersonville Road  
SR1536

-  Right of Way Closure
-  Streams
-  Streets
-  Parcels
- Municipal Boundaries**
-  Fletcher

FLETCHER



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

**§ 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.)



STATE OF NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION

ROY COOPER  
GOVERNOR

J. ERIC BOYETTE  
SECRETARY

October 30, 2020

Board of Commissioners  
Henderson County - North Carolina  
One Historic Courthouse Square  
Hendersonville, NC 28792

Re: SR-3 Road Abandonment petition for partial abandonment of Old Hendersonville Road.

To whom it may concern,

NCDOT has prepared a petition to abandon a portion of SR 1536 from the NCDOT state road system.

Attached, please find the SR-3 form for your review. Upon review of this petition, please complete and submit a form SR-2 to our office. If you have any additional questions, please contact this office at (828) 891-7911 or myself at [rh darnell@ncdot.gov](mailto:rh darnell@ncdot.gov).

Sincerely,

DocuSigned by:

*R.H. Darnell*

E3DD5A4810424B2...

R.H. "Rusty" Darnell

Assistant District Engineer

NC Department of Transportation

RHD/bgs

Enclosures

Cc: File

RECEIVED  
OCT 29 2020

North Carolina Department of Transportation  
Division of Highways  
Abandonment Petition

NCDOT  
DIVISION 14 - DISTRICT 1

North Carolina

County of HENDERSON

Petition request for the partial abandonment of Secondary Road SR 1536 - Old Hendersonville Road from the State Maintained System.

Beginning at the existing End of Maintenance on Old Hendersonville Road and continuing in a northerly direction for approximately 63 feet (0.012 miles) to be included in the partial abandonment process.

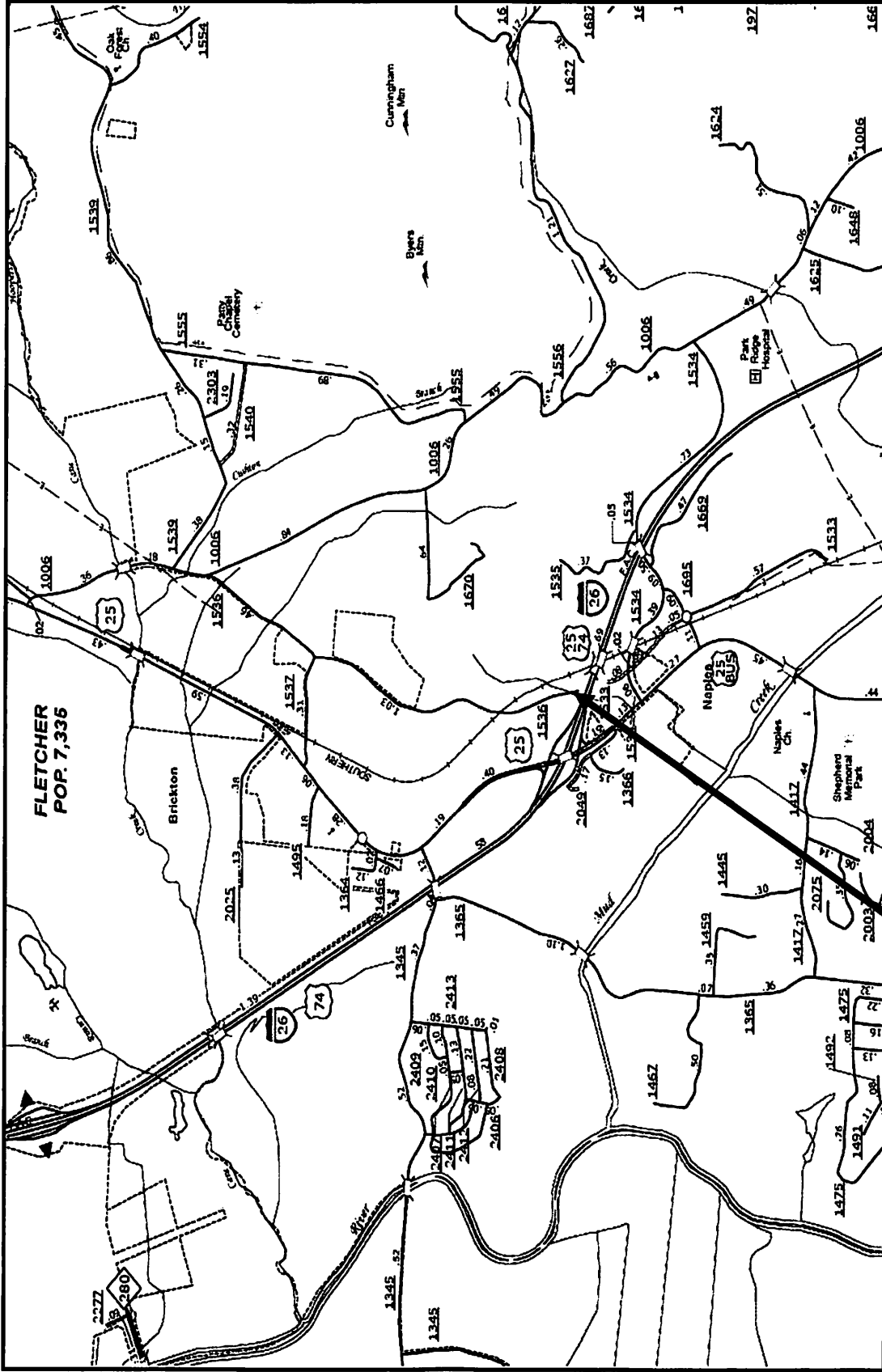
NOTE: From the intersection at Howard Gap Road to 1.46 miles, this portion of Old Hendersonville Road will continue to be State Maintained.

We the undersigned, being all the property owners on Secondary Road SR1536 - Old Hendersonville Road in Henderson County do hereby request the Division of Highways of the Department of Transportation to abandon this portion of the road from the State Maintained System.

PROPERTY OWNERS

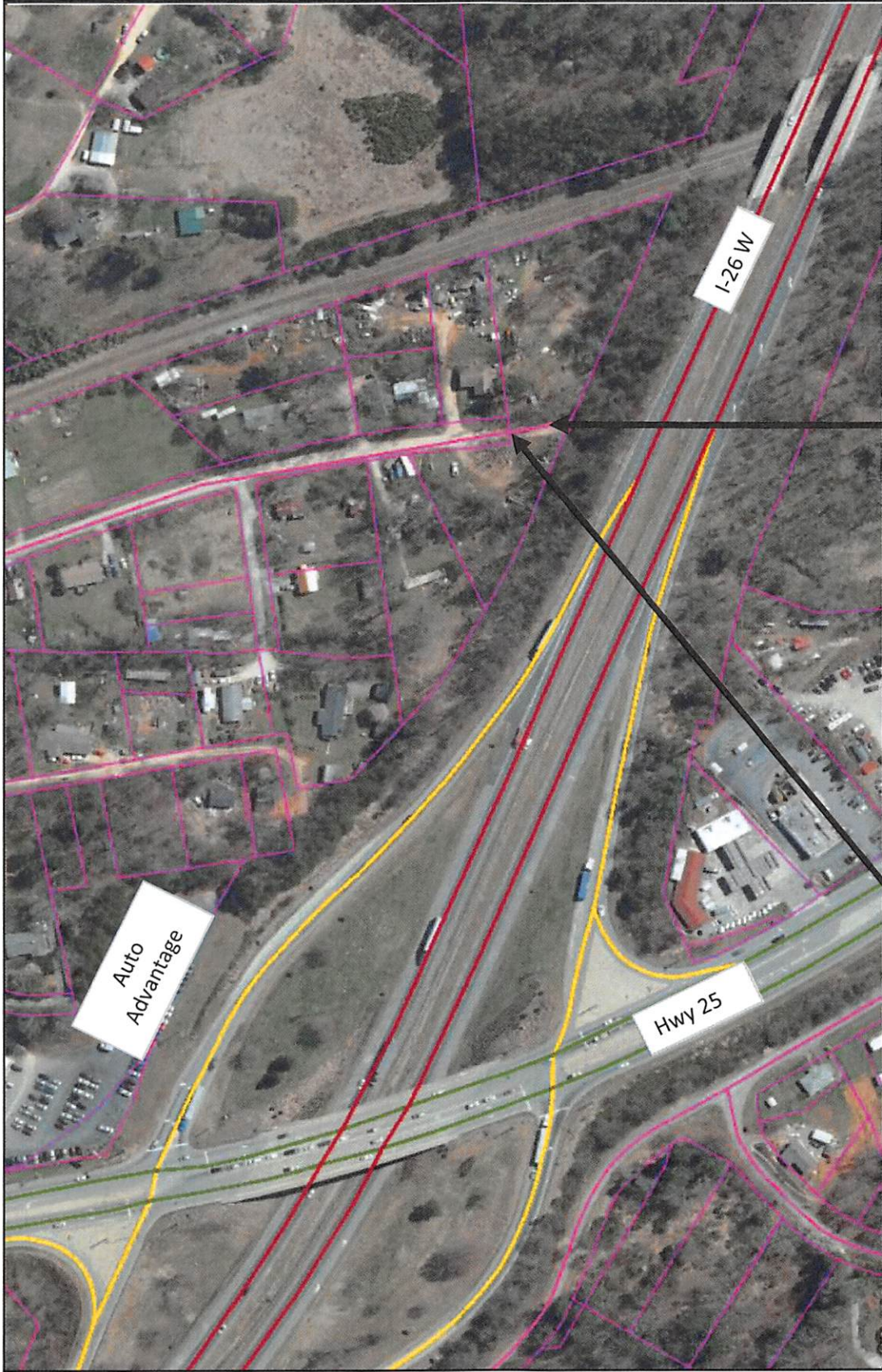
<u>Name</u>	<u>Address</u>
Andrew Patton Taber	2A Hillside Dr
Andrew Patton Taber	Greenville, SC 29607
WILLIAM RHETT TABER	2028 FAIRVIEW RD
William Rhett Taber	RALEIGH, NC 27608

# Henderson County Vicinity Map - SR1536 Old Hendersonville Rd (Partial Road Abandonment)



SR 1536-Old Hendersonville Rd  
Proposed Partial Abandonment  
From End Of Maintenance For 0.012 miles

Henderson County Vicinity Map - SR1536 Old Hendersonville Rd (Partial Road Abandonment)



SR 1536-Old Hendersonville Rd  
Proposed Partial Abandonment  
From End Of Maintenance For 0.012 miles

**Henderson County  
North Carolina**

Before the Board of Commissioners

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**ORDER CLOSING A PORTION OF  
RIGHTS-OF-WAY FOR OLD HENDERSONVILLE ROAD**

THIS MATTER came on for hearing before the Henderson County Board of Commissioners at its regular August 18<sup>th</sup>, 2021, meeting, pursuant to N.C. Gen. Stat. §153A-241, on the issue of closing a portion of rights-of-way for portion of Old Hendersonville Road was heard by the Board after public hearing. The Board of Commissioners makes the following findings:

1. This matter first came before the Board of Commissioners on at the Board's regular meeting on July 21<sup>st</sup>, 2021, on the petition of NCDOT to close portion of Old Hendersonville Road was heard in Henderson County.
2. At the Board's July 21<sup>st</sup>, 2021, meeting, the Board adopted a resolution "declaring its intent to close" the said portion of Old Hendersonville Road.
3. A map showing the area under consideration is shown on the attachment hereto, Exhibit A, (indicated by a red hatched area).
4. A notice of this Board's August 18<sup>th</sup> hearing was published once a week for three successive weeks before the hearing in the *Hendersonville Lightning*, a copy of the resolution was 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.
5. Before the Board on August 18<sup>th</sup>, the Board heard "all interested persons who appear with respect to whether the closing would be detrimental to the public interest or to any individual property rights" are required by N.C. Gen. Stat. §153A-241.
6. After such hearing, the Board is satisfied and finds:
  - A. That closing the public road or easement is not contrary to the public interest; and,
  - B. 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.

**WHEREFORE IT IS ORDERED** that portion of Old Hendersonville Road in Henderson



County as shown on the attached map is hereby closed.

Adopted by the Board by motion duly made, this the 18<sup>th</sup> day of August, 2021.

BOARD OF COMMISSIONERS  
OF HENDERSON COUNTY

By: \_\_\_\_\_  
Chairman

Attest:

\_\_\_\_\_  
Clerk to the Board

# Public Hearing to Abandon Portion of Rights of Way Old Hendersonville Road



Henderson County Board of Commissioners  
August 18<sup>th</sup>, 2021

Henderson County Planning Department

1



Henderson County Planning Department

2

# Questions or Comments



Henderson County Board of Commissioners  
May 3<sup>rd</sup>, 2021

*Henderson County Planning Department*

3

# Public Hearing Comments

*Henderson County Planning Department*

4