

HENDERSON COUNTY PLANNING BOARD MINUTES August 16, 2004

The Henderson County Planning Board met on August 16, 2004, for a Special Called meeting regarding a public input session for US 25 North at 7:00 p.m. in the Board of Commissioners Meeting Room, Henderson County Administration Building, 100 North King Street, Hendersonville, NC. Board members present were Tedd Pearce, Chairman; Mike Cooper, Vice-Chairman; Leon Allison, Paul Patterson, Tommy Laughter, Jonathan Parce, Renee Kumor and Vivian Armstrong. Others present included Anthony Prinz, Planner; Autumn Radcliff, Planner; Brad Burton, Zoning Administrator; Karen Smith, Planning Director and Kathleen Scanlan, Secretary.

Mr. Prinz began a presentation, stating it is intended to be a brief summary of the Henderson County Planning Board's rezoning recommendations for the US 25 North area. Referring to a map projected on a screen, Mr. Prinz stated that the study area is greater than 5400 acres or approximately 8 ½ square miles. He said that when looking at its geographic location, it is in the northern portion of Henderson County between the Town of Fletcher and the City of Hendersonville's ETJ to the south. The major transportation infrastructure in the study area include US 25 North, Interstate 26, a small portion of Howard Gap Road and a segment of the Southern Railway line. The sensitive natural areas include the 100-year and 500-year floodplain, which makes up a significant portion of the study area, greater than 1400 acres or one quarter of the entire area. The flood prone areas are created by the overflow from Cane Creek to the north and Mud Creek, which flows through a greater portion of the study area. The Planning Board recommended altering the study area boundary to minimize split-zoned parcels along the southwestern border of the study area. The original recommended study area is shown on the map in green and the current boundary is shown in red. As a result, the Planning Board expanded the study area slightly. Currently the entire study area is zoned, however the Open Use Zoning District is the most predominant district, which is shown on the map in white. He said recommendations made by the Planning Board generally follow three major principles as established by the recently adopted County Comprehensive Plan. First, the commercial zoning is located at key road intersections such as the intersections of US 25 with I-26 and Mountain Road to the south. These create commercial nodes at different scales; local, community and regional, controlling intensity of commercial use. The floodplain areas are zoned to allow lower densities of development consistently focusing on large lot residential districts of R-30, and RC. Recommended residential zoning districts in the study area promote a diversity of housing opportunities by establishing a wide variety of new residential zoning districts. Each residential district was placed to allow a variety of housing types and also to provide developable land for future growth.

Recommended industrial zoning is generally located around existing industrial uses such as Arvin Meritor, Owen Mills, TDM and the Mountain Home Industrial Park, which are shown in purple on the map. Some existing industrial zoning districts were recommended to be altered along southern portions of US 25. He noted that on the eastern side of the Southern Railway it is recommended to be modified to RC, which is based upon its proximity to flood prone areas to the east and the location of the 100 and 500-year floodplain in that area. He said that there were a number of parcels added

including the Brickton Industrial Park and three parcels to the north of the existing Mountain Home Industrial Park.

He said that there were three commercial nodes that were recommended to promote a variety of different scales of commercial development and these were focused at key road intersections. Properties zoned C-4 around the US 25/I-26 interchange is proposed to create a large-scale regional-type commercial development and is based primarily on its access to US 25 and I-26 and the availability of developable property. C-2 and C-2P are recommended at the intersection of US 25 and Mountain Road to establish a medium-scale local commercial node. He said that the C-2P (Preservation Neighborhood Commercial) zoning district would offer some type of transition between the C-2 uses, which would be more intense commercial, and the R-15 that surrounds that area. The C-1 district was recommended at the intersection of Holbert Road and US 25 North to account for existing uses such as the GDS Transfer station, an auto repair shop and a real estate firm. The C-1 district, allows a maximum size of five acres, which limits the ability for commercial development.

He said that O & I (Office and Institutional) was recommended for the Heritage Hills parcel that fronts US 25 North. This district allows for the expansion of the nursing home with a special use permit.

He said that recommended residential zoning is extensive in the study area (which is shown in yellow on the map), and the darker shades indicate more dense residential zoning districts. He stated that the only residential zoning district that is available that is not proposed was R-10 and this was based upon the absence of adequate water and sewer infrastructure in this area. He said that these recommendations were mainly based on existing conditions such as existing zoning, lot size and structure type. The R-40 (Estate Residential district), such as in the area of Stoney Mountain Estates, was already in existence prior to the study and is recommended to remain R-40 as it best suits existing large lot residential development. R-40 requires a minimum lot size of 40,000 square feet. A number of "T" districts were recommended which allow for the placement of manufactured homes on single lots and manufactured home parks with a special use permit. He said that these areas were selected because existing conditions were comparable with what you would expect from a "T" district. He said that zoning recommendations for the floodplain consist predominantly of low-density, large-lot districts such as RC (Rural Conservation) and R-30. These districts were proposed to lessen impacts on the natural environment by limiting the intensity of development. The RC District was recommended in a number of areas as it allows for a variety of uses, which include low-density residential and some commercial uses with a minimum lot size of one acre.

The parcels in the northeastern portion of the study area, which are owned by the Layman Foundation and Park Ridge Hospital, were recommended to remain Open Use. He said that Open Use is the least restrictive zoning district in the current zoning ordinance, allowing almost all uses by right, except for adult establishments, hazardous waste disposal facilities and radioactive waste disposal facilities. Eleven uses such as incinerators, concrete plants, as well as others are allowed in the Open Use District, however they are subject to site standards. He said that it is intended that these parcels be rezoned after the Zoning Ordinance Rewrite is complete in the fiscal year 2005-2006 and an appropriate district has been created for this type of development. The Zoning Ordinance specifically addresses uses that were existing prior to zoning that may not comply with the Zoning Ordinance. These uses are referred to as non-conforming uses

or lots, or “grandfathering.” There are also various ways to establish a vested right for projects that are planned and may or may not have been started.

Chairman Pearce opened up public input and asked each citizen to limit his or her comments to three minutes.

Frank Jackson. Mr. Jackson stated that he was representing Mr. Tommy McCraw, who owns a tract of property, which is located across the street from Printpak, and the Mountain Home Industrial Park, near Old Roper Road. He said that under the proposed recommendations, Mr. McCraw’s property, which is presently zoned light industrial, would have a very small area for potential commercial development, but once the setbacks are accounted for and greenways, his property would be grievously damaged. Mr. Jackson presented an exhibit showing the deed to the property, a map showing the location of the property, an explanation of how this property existed prior to Mr. McCraw obtaining it in 1994 and the work that Mr. McCraw has put into this property. Mr. Jackson also noted that there are a number of commercial buildings surrounding the area. Mr. Jackson said that there is an appraisal made by the State of North Carolina on Mr. McCraw’s property, which indicates that the State feels that the highest and best use of the property, as improved, is for industrial and/or commercial use. Mr. Jackson noted the detailed improvements that Mr. McCraw has made to the property and the amount that he has invested in the land for the improvement. Mr. Jackson feels that Mr. McCraw has a vested right to continue to use it in the manner that he has, given the expenditures (approximately \$ 20,000) that he has placed on this land based on the existing zoning. Mr. Jackson feels that this recommendation would constitute “spot zoning” in that the people who are having their land converted from commercial to residential are losing value, and the scheme causes a monopoly for the commercial land and those whose zoning is not changed.

Sam Fritchner. Mr. Fritchner, representing WFWA, LLC, said the area on the west side of US 25, north of Needle Lane to Ferenvilla Drive should also be zoned commercial instead of residential as proposed. He said that he (Mr. Fritchner) has the only residence that fronts on US 25 in that entire portion north of Needle Lane. He said that the area’s current use is commercial/light industrial and is tending toward the same. He asked the Board to consider the fact of commercial use currently on the road and with the exception of Ferenvilla Drive that commercial be brought back about 1000 feet.

Ed Groce. Mr. Groce stated that he represents Mr. Larry Holbert, who, with his brother, owns several tracts along US 25. He said that starting on the south end, they own where the nursery is in front of Heritage Hills, the tract directly across from US 25, which is adjacent to the Mountain Home Industrial Park, a tract of land immediately across the from where Country Road comes in, and a tract of land at the intersection of Rugby Drive and US 25 on the same side as Thomas Shepherd Memorial Park. Mr. Groce stated that no one would think about building a house in the floodplain or along a five-lane highway. He said that is not what people naturally tend to do and yet it is what the proposed recommendations call for. Mr. Groce said that in preparing a zoning scheme, he feels that the Planning Board should look at what are the existing and surrounding uses and all the property that abuts on US 25 on either side is commercial or industrial. He said that the property owners bought it for commercial, they’ve invested money in it and that is the way it should be zoned.

Ed Vogel. Mr. Vogel stated that his property is at the corner of Mountain Road and US 25 North. A piece on the right-hand side of the road. He said that it is proposed as C-2. He said that Mountain Home needs a convenience store with a gasoline station and therefore needs a C-4 zoning. Mr. Vogel said that he is requesting a C-4 zoning for that piece of property. He said across the street from there is a twenty-two acre tract of land, which is proposed C-2P, and the purpose of this district is to provide for commercial and residential activity in selected historical communities. He said that he has not found the "historical community" in Mountain Home. He said because the land is flat, it would be appropriate for a shopping center and other uses including grocery stores. He said presently it is being rented to a manufactured home outlet, which is also a C-4 use and if he wanted to expand that use, he would not be able to do so under the C-2P zoning. He would need a C-4 zoning as well for restaurants except where he can do one with a Conditional Use Permit. He feels that a shopping center in the area would provide jobs for the community, economic growth, increase the tax base, and would be for the good of the Mountain Home community. He would like C-4 zoning on both sides for its present and future use.

Mattie McClain. She is concerned with the zoning in the Brickton area as she feels it will cause the taxes to rise on the homes there. Ms. McClain stated that she had twenty-three homes built by the government for underprivileged people in that area and is worried about how they will pay for their taxes if they rise due to the zoning change. She would want the area zoned to where residents can still pay their taxes.

Karen Heggen. Ms. Heggen reaffirmed what others had said. She said that she has an office on U.S. 25 and said the Planning Board needs to better explain why the section of highway near Mountain Home should be treated differently from the rest of the road south of Asheville in the Biltmore area, which is commercial. She also mentioned that she would like some information on how the floodplain situation affected the decisions that have been made to date.

R.L. Roper. Mr. Roper said he has been a resident of 140 Old Roper Road for many years. He said that both sides of the road have not always been commercial, it was residential except for an area years ago where there was a grocery store near Heritage Hills. He is concerned with manufactured homes in the area and the problems with not having City sewer. He feels that the people who live in residences will be affected by any commercial use anywhere from the red light at the intersection of Brookside Camp Road to the red light at Country Road. He stated that he is also concerned with the junk that has accumulated at the foot of Old Roper Road where Worley's Furniture is located since he received his permits years ago.

Mark White. Mr. White said that he is speaking on behalf of Mr. Holbert who owns property near Naples Baptist Church on the corner of Rugby Road and US 25 North. He said that because it is surrounded by commercial, it should remain zoned for commercial purposes as he feels that the property is not appropriate for residential use. He said he and other appraisers have said the highest and best use is commercial. Mr. White also spoke about a second piece of property, which is located across from Heritage Hills and beside the Mountain Home Industrial Park. He feels that this piece of property should be used for either industrial or commercial. Mr. White said that any time you expand a major corridor coming into the town, the highest and best use on both sides of the road would be commercial.

Bryan Vaughn. Mr. Vaughn said that he owns a tract of land, which is approximately 6 ½ acres on US 25 North between Mountain Home and Naples. Mr. Vaughn said that he has had an auto repair shop in that location for approximately 26 years. He said that there is also another racecar shop nearby that is also proposed for a residential zoning district. He added that he doesn't feel there should be residential in that area because there are no sewer and water capabilities, as well as the highway being the main thoroughfare from the north and south. He would like this area to remain commercial.

Bill Fitch. Mr. Fitch lives on Magnolia Drive in the Grimesdale subdivision and is a residential realtor. He is concerned that the *Zoning Ordinance Rewrite*, along with the changes recommended in the US 25 North study, could have major impacts that the public doesn't yet understand. He feels that the media should get some input from the Board of Realtors and residential attorneys regarding what the consequences will be when this goes through. He asked, "Am I going to get another asphalt plant shoved down my chimney?" Chairman Pearce responded by saying that if you look at the plan you'll see that's not possible. Chairman Pearce said the rewrite of the *Zoning Ordinance* could affect plans for U.S. 25, but no one knows how long it will be until the zoning rules are revised. Mr. Fitch requested that the media in all forms explain to the public what exactly is being done regarding this study.

Stuart Bassine. Mr. Bassine was concerned with the area regarding the new road that goes to Park Ridge Hospital from the Naples area. Mr. Bassine was particularly concerned with the area around Twin Spring Road and feels with the surrounding uses (commercial, railroad, and cemetery nearby) make it not suitable for residential uses. He said that there is no sewer or water located in that area and feels that it would be difficult to obtain those services. He feels that this area should be for light industrial.

Scott Jarvis. Mr. Jarvis owns approximately twelve acres between I-26 and the access thoroughfare by Naples Road and the Southern Railroad. He said that he has moved approximately 150,000 yards of dirt to make an appropriate development for C-4 because of the access, water and the right-of-way to City sewer. He said his home is across I-26 and it is a noisy area. He and his brother also own land in the area. He requested C-4.

Dr. Joe Renfro. Dr. Renfro said that he lives in Georgia, but still owns his family's old home place at the corner of Mountain Road and U.S. 25. He commended the Planning Board for proposing a preservation neighborhood commercial district for many of the older neighborhoods around Mountain Home. He informed the Planning Board that folks from Florida historically colonized Mountain Home after the Civil War. He added that there is a history of Henderson County and it's not just commercial and that you need a residential area in any city.

Mr. Allison asked a question to Mr. Paul Woody, a member of Mountain Home Independent Baptist Church. Mr. Allison asked whether they would have any problems regarding the proposed commercial zoning? Mr. Woody wanted to know what the present zoning of the property is? Mr. Allison stated that it was Open Use. Mr. Woody wanted to know what Open Use meant. Mr. Burton explained that the Open Use district allows basically all uses by right, except for three, which would be adult establishments, radioactive waste handling facilities and hazardous waste handling facilities. He said there are some uses that are allowed by right with site standards such as incinerators, asphalt plants, transfer stations and such. Mr. Dennis Horn, pastor of the church said

that he would not suggest a C-4 zoning of that area, especially with the church being there. Mr. Allison said that he does not know what the appropriate zoning would be for a church. Mr. Horn stated that at this time they have no problems with the proposed zoning but would want residences around the area of the church.

Ms. Armstrong said that she feels that not everyone understands the overall picture of the US 25 North study, and that it is the first step toward implementing the County Comprehensive Plan and its attempt to guide development to limit sprawl. She asked whether Staff could help explain the process. Ms. Smith said that back in March 2003, the County Commissioners looked at a strategy for accomplishing several planning goals. She said that one of the goals was to get the County Comprehensive Plan finished, which is an overall twenty year plan for the community and that they also looked at trying to accomplish the US 25 North study. Ms. Smith said that there had been a rezoning request and the Planning Board at that time suggested that the County look at the US 25 North corridor. In March 2003, the Board of Commissioners decided that the US 25 North study needed to proceed, even though Staff was working on the County Comprehensive Plan simultaneously. Ms. Smith said that the County Comprehensive Plan has been adopted and the two plans now are having to merge more closely than what was first thought. The Comprehensive Plan has some general guidelines that Staff is trying to use as it develops the rezoning recommendations that the Planning Board has. The consultant that previously worked on this study and made its recommendations to the Planning Board was relying a lot on the prior Comprehensive Plan as well as what Staff could give him as to where Staff felt the County was going with the new plan. Ms. Smith said that we now have a Comprehensive Plan adopted, the US 25 North study is going on and the third project was the *Zoning Ordinance Rewrite*. She said that this project was tabled by the Board of Commissioners until the Comprehensive Plan was finished and there is an implementation schedule that calls for that rewrite to start back up. She said it is possible that there could be some changes made to zoning if this zoning plan or something similar to this were approved by the Board of Commissioners in the coming months, because the *Zoning Ordinance* may have some changes to it that then would be applied to the study area and to all areas of Henderson County. Ms. Smith said that the Comprehensive Plan talks about the County needing to adopt and implement regulations for floodplain development, as the County at present does not participate in the federal flood insurance program. She said that the question is going to be in what manner and how do we want to regulate the floodplain. She said that if the County works on an Ordinance that deals with floodplain management that could interplay with this area and the recommendations as well. Chairman Pearce said that the farmland preservation also plays in with the floodplain as the Board of Commissioners sees floodplain management as a means to preserve farmland. Ms. Smith said that when the Board of Commissioners as discussing adopting the Comprehensive Plan and looking at the recommendation as to adopting and implementing floodplain regulations, the Board saw it as a tool to preserve farmland, because a lot of the County's agricultural land falls in the floodplain. Ms. Armstrong stated that there was another large piece in the Comprehensive Plan, that there was a concern that the County was growing in a rather sprawling nature with development going out. She said that what we see here in the US 25 North study area is a concentration of housing and a relatively small area of sprawling. Ms. Smith said that the future land use map shows the County focusing services that would perhaps accelerate growth or accommodate growth in the urban services area and it proposes some community service centers nodes where you can have stores, medical offices, and other uses and then develop residential communities around that. Depending on the

water and sewer situation, the density would be governed by that as well. She said that concept was carried over in this study. Ms. Armstrong asked, "How many residential units are planned in this map?" Ms. Smith said that she does not know the answer and said that it all depends if people want to develop it to their full potential. Ms. Armstrong said that assuming maximum potential, do we know how many residential units? Ms. Smith said no, but Staff can calculate that and get an estimate. Ms. Armstrong was also concerned with the traffic impact of all of this density. Ms. Smith said that a traffic analysis has not been done and they do not have the means at this point to do that. She said that if the Planning Board wants to look at that, Staff will try to get someone with that expertise to do it. Ms. Smith said that the consultant did look very generally at access management, but at nothing regarding trips generated. She stated that she would need to look further in a trip generation manual regarding residential and commercial traffic trips. Chairman Pearce asked Staff to get some information about trips generated in the study area. Ms. Kumor said that she feels there should be a presentation made on the government channel so that people who can not get out or who would have liked to have had information before they came this evening could be able to see what the study is about. She also suggested in the presentation that maps with overlays of the flood areas in the study area, for example, would give the public an idea why the Planning Board chose the districts that were appropriate for certain areas. Ms. Smith encouraged citizens to call or come by the Planning Department office to talk about their particular pieces of property in this study area. Chairman Pearce said that in response to Mr. Fitch's comments about how the zoning ordinances and the different districts relate to their property, he asked Mr. Burton to review the various commercial districts. Chairman Pearce said that most of the property involved in this study area is in the Open Use District, which has almost no restrictions. He said there has been increasing requests for more restrictive zoning or more conventional zoning because of complaints of what happened in the past about certain facilities that might have been built on US 25, because there wasn't a zoning plan. Therefore it was the recommendation of the Planning Board to request a zoning study be done of the US 25 North area so that when the road project in this area was completed that there would be a plan. He added that with all plans, time will change the plan itself and time might show that the area will need more commercial area or more residential, etc., and time is a teacher and community and economic trends will have an impact on the future. Chairman Pearce said that the Board is trying to set a base standard here and get something started. He said that the Board of Commissioners and future Boards of Commissioners will try to decide what is best. Chairman Pearce asked Mr. Burton to review the commercial zoning districts at this time. Ms. Smith stated that there is a handout that describes the zoning districts for the public. Mr. Burton reviewed C-1, C-2, C-4 and C-2P zoning districts and what is permitted in each district and the differences between each district. Chairman Pearce also reviewed the definition of the RC District. Chairman Pearce also informed the public of the various places and locations that they can get information regarding the Zoning Ordinance. Ms. Armstrong said that there were several property owners that were represented by counsel tonight, but there are other people who are not represented by an attorney. Land owners whose property may be rezoned have remedies and they have legal recourse and it is called vested rights. Ms. Armstrong asked Ms. Smith if she would speak on vested rights so the public would have better knowledge of this option. Ms. Smith said that vested rights generally means you can continue to do what you are doing but also can you do what you have been planning to do on the property. Ms. Smith explained the three types of vested rights. The first type is a building permit. She said that if a building permit has been issued and you have started construction and keep it active, that building permit is one type of

vested right in North Carolina. The second type is a common law vested right, which involves how much money has been expended in good faith based on the zoning that is there now and this is a decision that would need to be made at the time the zoning would take effect. She said that it is an administrative decision that is appealable to the Board of Adjustment and then to court. The third type of vested right is called statutory vested right which means that the County has a ordinance which people can apply under to get a vested right granted to them. She said it requires a site specific development plan which would need to come before the Board of Commissioners for a hearing and the Commissioners can grant it for two years and can extend it up to five years, depending upon economic conditions and the rate at which you proposed to develop.

Charles Mason. Mr. Mason stated that he lives in Grimesdale and said that he is concerned with the inconsistency of the application of the RC district. He pointed out where the RC district goes near the asphalt plant and then disappears along the Mud Creek area and seems to be only on the east side of Mud Creek further down. He is confused why you would want to take one hundred year floodplain and have it as R-40 when it should be RC to encourage agriculture and farming and because this area floods every year. Chairman Pearce said that the Committee tried to go with what was existing there. Mr. Mason said that citizens shouldn't have to request a change in zoning to get back to doing something with the land that has been done with the land for hundreds of years now. Chairman Pearce said that a person can continue doing what's been on the property indefinitely, even with the rezoning as it does not affect what you are presently doing on the property. Ms. Smith added that in counties in North Carolina, agriculture is exempt from zoning.

Joann Munger. Ms. Munger lives in the Grimesdale subdivision and was concerned about how the rezoning would affect her property taxes. Ms. Smith stated that the area of Grimesdale subdivision is already zoned more traditionally as R-15 and R-20 districts. She stated that there is no change proposed for that immediate area for zoning. She said that it could change before it goes to the Board of Commissioners and after but at this point, that area is proposed to stay the same. Ms. Smith said that if you are in the outer boundary of that subdivision, it may have new zoning.

Carolyn Mason. Ms. Mason lives in the Grimesdale subdivision and said that she has some acreage that has been in her family since the late 1800's. She stated that the property she has is farmland and has a pasture with horses on it and is approximately eighteen acres. She stated that although the entire property is zoned residential there are only two parcels that would be buildable, except where her existing home is located. Ms. Mason is concerned with the tax structure of residential versus agricultural. Ms. Smith stated that she would need to get in touch with the Tax Assessor's office for the type of rate she is being charged.

Danny Goodrich. Mr. Goodrich said that he has a auto business near the post office in Mountain Home. He said that there are six auto businesses located within ¾ mile from Rugby Road to Mountain Road. He said that he has been in business for twenty-three years and has invested money and labor in keeping his business going. He said that if his property gets zoned any less than what it is, then he feels that he will lose out and he wants to keep it as commercial, C-4, zoning.

Mr. Cooper said that as far as Mr. Goodrich's business, if he were to sell his business, they could continue to operate that as an auto business. Ms. Smith said that it doesn't need to be that particular type of commercial business. She said that the Ordinance reads that as long as a nonconforming business does not discontinue operation for more than six months, it still can be used for a business. It is in the process of being sold for business, that would be recognized as a continuation of a business operation. Mr. Burton agreed.

Adjournment. There being no further business, Tedd Pearce made a motion to adjourn and Vivian Armstrong seconded the motion. All members voted in favor. The meeting adjourned at 9:30 p.m.

Tedd M. Pearce, Chairman

Kathleen Scanlan, Secretary