

**Henderson County
Technical Review Committee Minutes
October 6, 2009**

The Henderson County Technical Review Committee met on October 6, 2009 at 2:00 pm in the King Street Board Room at 100 N. King Street, Hendersonville, NC. Members present were Anthony Starr, Chair: Seth Swift, Wally Hollis, Toby Linville, Natalie Berry, Marcus Jones, and Tom Stauffer. Others present were Mark Gibbs, NCDOT, Parker Sloan, Planner and Karen Ann Antonucci, ZBA Secretary.

Mr. Starr called the meeting to order and asked for the approval of the August 4th and August 20th Special Called Meeting minutes. Toby Linville made a motion to approve the minutes and all members voted in favor.

Combined Master Plan and Development Plan – Stone Ridge (# 2009 –M04) – Two Single-Family Lots Located off Ciccone Drive – James Mitchell, Surveyor, Scott and Sharon Orr, Owners. Presentation by Parker Sloan, Planner. Mr. Sloan stated that an application was submitted proposing a total of 2 lots for a total of 3 lots since April 208 submittal. The project is located on 8.07 acres off Ciccone Drive and is in a WS-IV PA water supply watershed, but not within the floodplain. Mr. Sloan stated that the project site contains portions with slopes in excess of 60 percent. It is zoned Residential One (R!). Mr. Sloan went over the Master Plan comments and reviewed the Development Plan comments as follows:

1. Subdivision Names – the final plat shall contain certification that the public records of the County have been searched and the proposed subdivision name meets the standards set forth in the Land Development Code.
2. Subdivision Signs – All Major Subdivisions may provide for, at the primary entrance, a community identification/subdivision sign to conform to the sign regulations. Such signs should be located in dedicated sign easements which must be shown on the final plat.
3. Road Frontage and Off-Site Access – Any tract of land to be subdivided must have frontage on an existing public road or a private right-of-way to a public road. Proposed rights-of-way must be capable of supporting a road. Such road rights-of-way standards apply within the boundaries of the property being developed. The project site proposed a private 30-foot right-of-way as access to Ciccone Road. As the proposed right-of-way falls completely within Michelle and Ben Smith's property, the applicant must provide staff with a right-of-way conveyance filed by the Register of Deeds permitting use of this off-site access. Any proposed right-of-way must be dedicated prior to road construction and prior to plat recordation. The proposed right-of-way shall be shown on the final plat.
4. Soil Erosion and Sedimentation Control Plan – The Applicant shall submit written notice from the appropriate local agencies verifying that an Erosion and Sedimentation Control Plan has been received or a written notice from a professional land surveyor, engineer, landscape architect, architect, or professional planner certifying that no plan is required.
5. Miscellaneous Advisory Provisions – The applicant should become familiar with the miscellaneous advisory provisions contained in LDC.
6. Final Plat Requirements – The Final Plat(s) must meet the requirements provided by the Planning Department whenever a subdivision of land occurs.

Mr. Starr wanted to know how lot #2 was going to have access to the road. Ms. Orr stated there is a proposed Right-of-Way across the lot that she sold to friends. Mr. Sloan stated there was a proposed off-site right-of-way on the Smith's property. They discussed the 30 foot right-of-way that was shown on the site plan. Mr. Starr wanted to know if it was a descriptive right-of-way or a non-descriptive right-of-way. Ms. Orr stated the right-of-way was not platted because they were waiting on approval. Mr. Orr said the right-of-way runs parallel to the existing property line. Mr. Sloan stated there was a 60 foot right-of-way that runs up to parcel A that was not clear because

of the other notations on the plan. Mr. Linville recommended that it be a platted right-of-way on the recorded survey. Mr. Gibbs asked if the intent was to have three homes on the three lots at some point. Ms. Orr indicated that on lot #2 and the right-of-way would only serve the one house. Mr. Gibbs told her if the drive was only serving the one home she would not need a driveway permit.

Mr. Starr made a motion that the Technical Review Committee find and conclude that the Combined Master and Development Plan appears to comply with the subdivision provisions of Chapter 200A, Henderson County Land Development Code and further move that the Combined Master and Development Plan be approved subject to requiring the right-of-way to be reflected on the recorded survey. All members voted in favor.

Major Site Plan Review for Coastal Agrobusiness / William McKay wishes to use the property for Product Processing and Storage which requires major site plan review per S.R. 10.13. Property is located on McMurray Rd (PIN 9588353238). The project is currently awaiting a zoning map amendment to the Industrial (I) zoning district. It has public water and sewer. Presented by Toby Linville. Mr. Linville said he was aware of the project before the rezoning on August 4, 2009. He indicated the major site plan before the committee was the follow up to that. Mr. Starr stated the rezoning was approved on October 5, 2009 and the property is now zoned Industrial. Jon Laughter, agent, stated there would be four buildings constructed on the lot. Another building would be constructed at a later date. Mr. Linville said a portion of the orchard would be left around the site for the required buffering. Mr. Gibbs said the driveway would need to be maximum width of 36 feet and not the 50 feet shown. However the radius could be increased to 50 feet to accommodate the truck traffic. Mr. Laughter agreed to do that. There was discussion about a culvert being on the crest of Windy Hill for better site distance. Mr. Gibbs asked for clarification on whether the crest was between Windy Hill and Reeds Road. Mr. Laughter stated the crest was in that location. Mr. Gibbs wanted to know if the existing road bed shown on the site would be done away with. Mr. Laughter said it would be. There was some discussion of off-sets being lined up with the existing drive. Mr. Starr suggested the any changes required by DOT would be filed with Code Enforcement as a condition to the approval of the site plan. Mr. Linville said he would make it conditional on the approved DOT permit. There was further discussion of where the driveway was shown and asphalt on the site plan.

Mr. Starr made a motion to approve the site plan with one condition that the revised plan be submitted to Mr. Linville's office once DOT approves the driveway permit and the site plan approval is contingent upon receiving the driveway approval from DOT. Mr. Linville asked if Mr. Laughter would be submitting a different plan to DOT or submitting the plan before them. Mr. Laughter said he would submit the plan before the committee with the proposed driveway relocated and reduced to 36 feet. Mr. Gibbs agreed to accept the revised plan instead of a new one. Mr. Starr restated the motion. All members voted in favor.

Major Site Plan Review – Mona Lisa Foods/Peter Thom – Product Processing and Storage Facility located at 51 St. Pauls Rd. on approx. 2.91 acres and zoned Local Commercial – Public water and private sewer are proposed – Stuart Stepp, agent for Mona Lisa Foods/Peter Thom, owner. Presented by Toby Linville. Mr. Stepp described the project as a 40 x 150 foot bay being added to the existing Mona Lisa Foods which will be a factory addition. The larger addition to the rear will be 80 x 150 feet which will be a warehouse addition. The additions will be in line with the existing building and will be off the setbacks. The new dock on the addition will be 14 feet into the setback. Mr. Stepp has been working with Toby Linville in seeking a variance. The variance request will go before the Zoning Board of Adjustment. Mr. Starr said he felt the committee would make a recommendation to the Zoning Board to approve the variance. Mr. Linville said the request was neither as the project is an expansion in the former Open Use zoning. He stated that product processing is not a permitted use in Local Commercial zoning districts.

Mr. Starr asked why the 14 foot variance could not be avoided. Mr. Stepp explained the intention is to have the new building in line with the existing building, as it is a rectangular configuration and the owner's operation works continuously within the plant that exists now. There is currently a dock on the lower portion (south side) of the building which serves as shipping and receiving. The desire is to have the new dock create a flow in the building to enhance production so that there would be the existing receiving dock and a new shipping dock. Mr. Stepp explained that if the new building is kept in line with the existing building and necessary for a pre-engineered building then that new dock would just need to be an extension off of the new building. The site plan will be shown to DOT to show the truck movement in and out of the property as it exists now. As it is drawn now trucks will have to back a distance on the new driveway. Mr. Stepp stated there is an existing entrance and culvert near the dock that will not be used and will be abandoned. Only one entrance will be used instead of the two that are there now. Mr. Gibbs said that DOT would prefer that the driveway would no longer be used and be completely removed. Mr. Stepp indicated that from the fence line approximately seven feet of gravel has washed away during the last rain storm would be repaired and the new pavement would not encroach any more than the existing gravel. The ditch will remain the same however as the ditch goes north it will become narrower because of the topography of the land. The ditch is wider at the middle of the existing portion and gradually tapers back to the other driveway at the north end, (the one that will be abandoned). Mr. Gibbs wanted to know the distance from the edge of the pavement. He noted there was not a recorded right-of-way on St. Pauls Road. Mr. Stepp said it would be 45 feet from the edge of the building, but still 16 feet away from St. Pauls Road. Mr. Gibbs said DOT would prefer that the ditch was not piped because it would promote truck traffic accessing St. Pauls Road. Mr. Stepp raised the issue that was addressed with the Fire Marshal's office regarding the addition being a non-sprinkler building. Mr. Hollis had made sure there would be 100 feet of coverage for hose so that room access around the building can narrow per 100 feet and that was shown on the plan. Mr. Hollis said it was actually supposed to be 150 feet and asked if there was an option to move the dock to the north side of the building, with the side setback being 20 feet there would not be enough room to grade and have a decent slope, as per Mr. Linville. Mr. Gibbs asked that on the revised plan Mr. Stepp show a cross section of the roadway and what was hand-sketched on the current plan. As the existing drive configuration may not accurately show this, Mr. Gibbs wanted to see the existing driveway width along with the radius and noted that a driveway permit would need to be applied for. Mr. Jones wanted to know if an erosion control permit was pulled and Ms. Berry said there was one on file. Mr. Jones told Mr. Stepp he needed to implement the plan that was approved before any disturbance took place but Mr. Stepp pointed out that it was not part of his bid package. Mr. Jones wanted to have verification before they move forward that the measures were installed because they were not in compliance now.

Mr. Starr wanted to know if the new buildings were separate the way it was shown or all one continuous building. It appeared to Mr. Starr that in the hatched area there was a separation between them. Mr. Stepp said there was a fire separation as per building code because part of it is F1-Factory and part is S2-Food Commodities and a fire wall is between the buildings. He indicated the warehouse was higher for rack storage.

Mr. Gibbs wanted to know if the existing parking in front of the building would remain. Mr. Stepp said he was showing the parking as remaining because there was enough space for a truck to back down without having to increase the width, noting the trucks would back up about 300 feet down to the dock and the site would be paved. Mr. Starr felt that the variance request may be an issue when it gets to the Zoning Board of Adjustment in terms of meeting the requirements. Mr. Stepp felt that not asking for the variance would effect the DOT requirements and the usable space for warehousing. Mr. Hollis asked that all existing hydrants be indicated on the site plan. Mr. Stepp said that there was one shown on the drawing, by the erosion control detail, at 263 feet from the building. Mr. Hollis said there may need to be an additional hydrant along Route 64 as all portions of the building need to be within 400 feet of a hydrant. There was discussion on waterlines in the area, fire codes and the costs to run the lines. There was also discussion on

clearance coming around the northwestern corner of the proposed building in relation to the drain-lines for the septic. Mr. Gibbs felt that because of the trucks having to back up 300 feet there may be a possibility to shift the driveway further to the north and doing away with the existing driveway and making it somewhere centered on the building so the trucks could come in, turn like they are going south and then back into the dock. Mr. Stepp thought that DOT wanted them to keep the existing driveway. Mr. Gibbs suggested putting a truck template on the plan and relocating the drive. He would like to see it located further away from US 64 although it is adequate where it is now.

Mr. Starr said that one condition of the approval could be if the driveway connection configuration changes or doesn't change that it be re-filed with the Zoning office. Also, resubmit a revised plan to show where the hydrant would be as there may be hydrants closer to the one shown on the plan but Mr. Stepp was not aware he needed to check for others that may be closer and did not show them on the plan. He thought the committee only wanted to see the hydrant off of Route 64. Mr. Swift thought there may be a hydrant on the Justice Center property. If there was an existing hydrant near the Justice Center by the gymnasium then it would be close to Mona Lisa Foods. Mr. Hollis said that another condition should be erosion control measures be put in place. Mr. Linville made a motion to approve. Mr. Starr restated the conditions; with the revised plan to be resubmitted prior to construction that reflects any new hydrants that would be required as well as the driveway connections as allowed by the new driveway permit through DOT and erosion control measures being in place immediately. All members voted in favor.

Mr. Starr said the committee needed to make a recommendation to the Zoning Board of Adjustment on the variance. Mr. Linville felt that this request truly was a hardship based on the lot being full and the owner's desired use of the property.

Mr. Starr made a motion that the TRC recommend approval of the variance for the following reasons:

1. The existing building was there when Open Use was in place and therefore there were no setbacks at that time.
2. There are site limitations with the septic treatment system preventing them to move it to the other side of the building and still maintain the required Fire Code access standards.
3. There is no platted right-of-way along St. Pauls Road. It is a common law (maintained) right-of-way with a ditch line and DOT is comfortable with this type of configuration.

All members voted in favor.

Major Site Plan Review – Rick Moore Gym Facility – Indoor Recreational Facility – Located North of Highway 26 and Highway 25 Interchange on Maxwell Drive, Fletcher. Tom Jones of Lapsley and Associated agent for behalf of owners Rick and Beverly Moore. Presented by Toby Linville.

Mr. Linville explained that the TRC had heard the case just over and year ago and this was an addition to that site plan review. The project is an Indoor Gym Facility governed by S.R. 4.9 requiring a major site plan review, lighting mitigation, 100 foot perimeter setback from residential properties, for activities that may present hazards such as batting cages, fencing and netting is required. If there are on-site food sales the necessary permits must be obtained. Solid waste collection is required and public address speakers cannot be operated before 8:00 a.m. or after 12:00 midnight.

The property is approximately 2.16 acres near Highway 26 and Highway 25 interchange on Maxwell Drive in Fletcher and is located in a Regional Commercial zoning district.

Mr. Starr noted the property line goes through the area that would be shown for off-street loading and off of the proposed parking and wanted to know if that was correct. Mr. Jones said the 100 foot contact driveway easement that was recorded from Champion Way to 100 feet into the property. A new section of driveway would need to be recorded. Mr. Moore said the waterline is

in place and the tap and saddle was recently ordered. The diameter they thought was there when they spoke to the City was actually two inches bigger, so one had to be special ordered from Alabama. By Wednesday the piece should be in and can be installed by Friday. Mr. Starr asked if the hydrants from the previous approvals were in. Mr. Jones said the hydrants meet the City and State requirements and are going for certification and discussed what was needed to be done. Mr. Starr needed to know how much additional time they would need to extend the Performance Bond because the deadline was October 1. Mr. Jones said they would need 30 days because the pipe work is in, the surveyor has been lined up, and will be doing the 'as-built' to certify to the State, and the City still needed to do their certification before it is technically complete. Mr. Starr said they may need to do an extension to the Bond.

Mr. Hollis wanted to know if there was access to the building on the south side and where did the pavement end. Mr. Jones said there was no pavement along the south side of the building. The pavement ends at the handicapped accessible spaces. He said the closest access was Maxwell Road but the back was a steep slope and fire fighters could not access the site that way. Mr. Hollis said he needed access within 150 feet of the building because the building has a sprinkler system, Mr. Hollis also mentioned that he could increase the access distance. There was discussion on how the buildings would be tied together to receive the sprinkler systems. There was also further discussion concerning the structure of the building. Mr. Starr said a zoning permit should not be granted until the water line is completely in place and certified. Another condition should be that the easement should be recorded and provided to the Zoning office as part of the site plan approval. A third condition could be to draw a driveway access around the building if necessary. Mr. Hollis said the building being fully equipped with sprinklers, changes the requirements. He thought the plan as presented for accessibility was acceptable. The Fire Department connection would need to be determined, as per Mr. Jones because the sprinkler system had not been designed.

Mr. Starr made a recommendation to approve the site plan with two conditions being the water line being in place before a zoning permit is issued and the driveway easement being recorded and provided to the Zoning Department. Mr. Linville moved to accept the motion. All members voted in favor. Mr. Starr agreed to extend the bond for 60 more days.

Minor Site Plan Review – Mountain Roots/George Barnwell and Little Bearwallow Mountain, LLC-Wind Mill/Turbine Accessory Use – Located off Little Bearwallow Road – John Myers of Mountain Roots for George Barnwell and Little Bearwallow Mountain, LLC, Owners. Presented by Toby Linville. Mr. Linville said that according to the Land Development Code wind turbines less than or greater than 40 feet in height require a special use permit. The two projects would be combined into one because it is under the same lease agreement. This use is governed by Supplemental Requirements 3.16 and 3.17. The first site is off of Bearwallow Mountain Road at the top of the mountain at the site where the Forestry Service, the County, and different agencies have towers. The other site is Little Bearwallow Mountain and is adjoining properties. Mr. Myers of Mountain Roots said Bob White was the installer of the wind spire off of Grant Mountain Road, off of Chimney View Road of which he was the property manager; the other installer was not present. This one would be up on Bearwallow Mountain where there are existing towers. It is not as tall as the towers that are already there. Mr. Myers said he has a lease on Mr. Barnwell's property on top of the mountain. The project is being done through a non-profit company, Mountain Roots. Mr. Meyers said he is the president and has applied for a state grant to fund 50% of both the turbines as an educational project through UNCA with Warren Wilson College Tech. He said they would not be making any money from the project; it is just for educational purposes. Mr. Starr asked Mr. Meyers to explain what residential or business the project would be tied to and what would be done with the power generated. Mr. Meyer explained that on top of Bearwallow there is existing power underground. The power would be sold into the grid to Progress Energy. The other site has underground power also and the power generated there would also be going into the grid. A converter may be used to allow some of the power to be used for a small cabin that may be placed at the site some time in the future and that power

generated would go into the Duke Energy grid because it is a different territory. Mr. Starr said the major issue discussed while visiting the Bearwallow site was the setback requirements. Mr. Starr stated that one thing he would advocate recommending to the Board of Adjustment is the setback of 110% is from not only the existing towers but the towers' guy wires. He felt it could have a domino effect if the turbine were to collapse, or potentially vice-versa. The concern was the turbine taking a communications tower down because some of the towers are public safety related. Mr. Starr did not know what the 15 foot elevation move would do to projected wind generation.

Mr. Linville asked if the iron pin in the ground was where Mr. Myers was going to locate the turbine. Mr. Myers did not place that pin there. He said to get out of the fall zone of the tower just above where they wanted to place the turbine they'd have to go downhill quite a distance and Mr. Barnwell did not want the turbine placed where the existing towers are. He wanted to keep everything clustered together. Moving the turbine away from the fall zone of the mentioned tower may push the turbine out of the area of the lease agreement.

Mr. Starr said he understood but the threat to the other towers is warranted and it be made a condition. He said he would not favor placing it within 110% of the height of the proposed wind turbine within the guy wires as well. Mr. Starr said he was not sure this was a permitted use or that the Board of Adjustment would even have the authority to grant the special use permit because the turbines won't be used with a home or business. There is no permit provision in the Code for utility grade non-accessory type wind turbines. All wind turbines permitted in the Code currently have to be permitted as an accessory to a residence or business on site (and is one of the Supplemental Requirements). Ms. Zambon gave the example of putting a cabin on the site, and then the electricity could be used for the cabin. The turbine would be an accessory use to the cabin. Mr. Starr said the cabin would have to be constructed at the same time or before placement of the turbine. Mr. Meyers asked that the rational behind the reasoning be explained. Mr. Starr said the rational was the practical means to limit the scope and size of the type of units that would be installed to be an accessory to a home or a business. The other factor was that without that requirement many of the ridge tops could be littered with the turbines and that was a concern. They did not want to open the door too far on the regulations on the turbines without gaining experience. Approval cannot be determined on a case by case basis. State law explicitly prohibits the Board of Adjustment from granting a use variance. Unless the use is allowed, the Zoning Board cannot grant a special use permit. Mr. Starr said in his opinion it did not meet the definition of accessory wind turbine. Mr. Staufer said that if the turbine was put up without an accessory building in essence it was wind farming. Mr. Meyers said the use was not commercial in any way because this turbine is only 10 kilowatts and would not be destroying the view shed of the ridges. That site was chosen because it is good wind but it is an existing tower site and would not be destroying anyone's view shed or creating a wind farm by putting one turbine up. He felt he was not breaking any of the three rationales that Mr. Starr gave and said they were meeting all the rationales. Mr. Starr said he was meeting most of the rational in terms of the turbine not being utility grade but it was for that purpose and is not an accessory use. New regulations could be developed that may address that in the future but the TRC does not have the authority to waive the requirements nor does the Zoning Board of Adjustment. If it is determined by the Board of Adjustment that it is in fact not an accessory wind turbine then they would not issue the special use permit because it is not in their power to waive whether or not it is a permitted use. Mr. Meyers asked for definitions of accessory buildings from the Code. Ms. Zambon explained the definitions. There was discussion of sending the power to the existing structure already there or the renters on site and would Mr. Meyers be willing to work out an arrangement with one of the service providers there. Mr. Hollis said a State Patrol building would be placed on the site which is a 20 x 40 structure that would be close to the County building and this may interfere with the location of the turbine also. Mr. Meyers asked if the existing structures that drew power would qualify as the required structure. Mr. Starr said the language of the requirement reads 'wind mills or turbines shall only be permitted in conjunction with a principle residence dwelling unit or business. The factor would be whether or not the towers could be considered a business.

There was a discussion on the cell tower structures being used as the business that the power could be sold to. Mr. Starr said they'd need to go back and look at the definition for business. He suggested tabling the issue until next month to see if Mr. Meyers could work out an agreement with the tower companies and the TRC could check to see if it would qualify. Mr. Linville wanted to meet with Mr. Meyers to see exactly where he wanted the turbine would be located. He also wanted to know where the new Viper building was going. Mr. Starr said the plan needed to reflect the exact location of the new Viper building. Ms. Zambon felt the legal issues on the definition would not take long and wondered of there could be a conditional recommendation to the Zoning Board. Mr. Starr said the definition of business would just be a matter of Mr. Linville, Ms. Zambon and Mr. Meyers deciding that. Mr. Starr said if Mr. Meyers made verbal commitment with the tower owners the Board of Adjustment may issue an approval of the special use permit contingent upon the arrangement being finalized.

Mr. Starr said he would prefer to table the site plan until next month's TRC meeting. Mr. Meyers said he could make the setback requirement that Mr. Starr suggested work. Mr. Starr told Mr. Meyers they would have an answer on the business definition early next week and whether it would be allowed in their opinion. He suggested Mr. Meyers be working with one of the tower owners to see if they can use the power from the turbine. Mr. Starr said ten days before the next TRC meeting he needed to have the revised site plan showing the actual location of the turbine meeting the 110% requirements. Mr. Meyers asked if he placed a structure on site for educational purposes that would use the power, would that be permitted. Mr. Starr said they would need to see if it is a permitted use in that zoning district. Mr. Meyers said Mr. Barnwell was giving the turbine and an accessory building on the lease agreement. Mr. Starr said he could meet with Mr. Linville and/or him before the next meeting and work that out.

Mr. Starr made a motion to table the meeting until the next meeting. If no additional information is provided and Ms. Zambon and Mr. Linville decide it will not work part of the motion to table would be that this particular application is deemed denied.

Mr. Hollis added that he needed some assurance the turbine would not interfere with radio communications. Mr. Meyers said he spoke to the site manager (Mr. Meyers contacted the site manger through Mr. Barnwell but could not recall his name) and he was not concerned about interference. The manufactures can also provide documentation that it would not interfere. Mr. Hollis said the site manager was Rocky Hyder. Mr. Starr said they would need that documentation that was an expert from the manufacturer.

There was discussion on what type of structure could be placed on the other site to make the turbine an accessory to a business to comply with the requirements. Mr. Starr suggested a seasonal home. If it were a business it would have to be the type that would be permitted in that zoning district. Mr. Meyers said it would be an overnight cabin for guests or an educational building for students. Mr. Hollis said if it was an overnight cabin it would have to be sprinkled. Mr. Swift noted that water would be a major problem for a building if a bathroom were required.

Mr. Starr said they would table both sites and the application until next month's TRC meeting pending bringing back the information. If for some reason it would not work and they did not come back then it would be deemed denied. If in the future the regulations were changed or a new site was presented it could be reconsidered.

Mr. Linville and Ms. Zambon decided the case would not be scheduled on the October 28 Zoning Board of Adjustment agenda. All members voted in favor of tabling this item.

Mr. Starr adjourned the meeting at 3:30 p.m.

Anthony Starr, Planning Director

Karen Ann Antonucci, Acting Secretary