

## **AGENDA**

**CITY OF HENDERSONVILLE  
PLANNING BOARD  
MEETING  
City Operations Center  
305 Williams Street  
Monday September 12, 2016  
4:00 P.M.**

- I. Call to Order**
- II. Approval of Agenda**
- III. Approval of Minutes for the meeting of August 8, 2016**
- IV. Special Use Amendment – Application from Kevin Hoover for The Town Center located at 2560 Asheville Highway to add the following uses to the previously approved Special Use Permit; restaurant, music or art studio and personal services. (File #P16-27-SUR).**
- V. Special Use Amendment – Application from Halvorsen Development Corporation for an amendment to the South Market Village located on the southwest corner of Greenville Highway and White Street. (File #P15-16-SUR).**
- VI. Staff Comments**
- VII. Adjournment**

## MEMORANDUM

**TO:** Planning Board  
**FROM:** David T. Hazzard  
**RE:** The Town Center  
**FILE #:** P16-27-SUR  
**DATE:** September 1, 2016

### PROJECT DESCRIPTION

The City is in receipt of an application to amend a Special Use Permit from Kevin Hoover to add Uses to the previously approved special use permit for The Town Center complex located at 2560 Asheville Highway. This project was previously approved by City Council at their regular meeting on April 9, 2009. The Town Center has already been constructed.

Generally, minor modifications to approved Preliminary Site Plans are only subject to staff review and approval. However because the applicant has proposed additional Stipulated Uses other than the uses previously granted by City Council an amended Special Use Permit approved by City Council is required.

### PLAN REVIEW

#### **General**

The project is located on parcel 9660-40-2792 and is approximately 2.20 acres. The previously approved 31,780 sf building has been constructed, has a total of 8 units all of which are vacant with the exception of a fitness center. The existing zoning of this parcel is C-3SU Highway Business Special Use classifications. An aerial map of the existing site can be found on page 7 and the original approved preliminary site plan can be found on page 8.

#### **Uses**

The previously approved Stipulated Uses are as follows:

- Offices, business, professional and public
- Retail Stores
- Fitness Facilities

The applicant is requesting the follows Uses be added to the list of Stipulated Uses:

- Restaurant
- Music or Art Studio
- Personal Services

**Parking**

The project has 89 existing parking spaces. City staff shall review the existing and proposed uses before any new businesses occupying the building to ensure the site has adequate off street parking to support the proposed use.

**ANALYSIS**

This is a constructed, previously approved project thus City Council has determined this project has met the findings of fact as set forth in Section 7-4-10.1 of the Zoning Ordinance.

**A neighborhood compatibility meeting concerning the application was held on September 2, 2016. Notice was provided by U.S. mail to the owners of record of all property situated within 400 feet of the subject property.**

**Approximately 2 members of the general public attended the meeting. The general public asked questions regarding the following:**

- **Parking**

**A copy of the neighborhood compatibility report accompanies this memorandum.**

## **SUGGESTED MOTIONS**

### **Special Use Permit**

#### **Recommend Approval:**

I move the Planning Board to recommend City Council approve the application of The Town Center for an Amended Special Use Permit to add, Restaurant, Music and Art Studio, and Personal Services to the list of stipulated uses. This approval is subject to the limitations and conditions specified on the published List of Uses and Conditions.

**[PLEASE STATE YOUR REASONS]**

#### **Recommend Denial:**

I move the Planning Board to recommend City Council not approve the application of The Town Center for issuance of an Amended Special Use Permit.

**[PLEASE STATE YOUR REASONS]**

**IN RE:        The Town Center (File # P16-27-SUR)**

**List of Uses & Conditions**

**I. Stipulated Uses:**

**Only the following uses are authorized for the referenced development:**

Offices, Business, professional and Public  
Retail Stores  
Fitness Facilities  
Restaurant  
Music and Art Studio  
Personal Services

**II. Conditions:**

**(1)    Must Be Satisfied Prior to Issuance of Special Use Permit:**

None

**(2)    Shall Be Attached to the Special Use Permit:**

City staff shall review the existing and proposed uses before any new businesses occupying the building to ensure the site has adequate off street parking to support the proposed use.

The Town Center

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

Planning Director's Report  
 Neighborhood Compatibility Meeting  
 Application for an Amendment to a Special Use Permit  
 The Town Center File #P16-24-SUR  
 Thursday, September 1, 2016      2:30 p.m.

Dave Hazzard, Senior Planner, convened the compatibility meeting at 2:34 pm in the Assembly Room of the City Operations Center. The following were in attendance:

<i>Name</i>	<i>Address</i>	<i>Name</i>	<i>Address</i>
Ken Fitch	1046 Patton St		
Larry Rogers, PEP	140 4th Ave W		
Kevin Hoover (applicant)	27 Cape Martin Circle		
Susan Frady, Staff	100 N. King Street		
Dave Hazzard, Staff	100 N. King Street		
Emily Sisler, Staff	100 N. King Street		

Mr. Hazzard explained that we have two items on the agenda that are both in the process of amending the special use permit and further explained the process of amendment. He stated that the projects were previously approved but that there have been changes since approval which require an amendment to the original permit. Mr. Hazzard stated that the goal of a Neighborhood Compatibility meeting is to have an informal discussion between the developers and citizens in which citizens can ask questions and make suggestions and the applicant can get feedback from the public. Mr. Hazzard stated that next the application will go before the planning board and will then be forwarded to City Council where it will be considered during a quasi-judicial hearing.

Mr. Hazzard began discussion of the first project by orienting the audience using a map. He explained that the Town Center project was previously approved on April 9, 2009 and that the applicant has requested additional uses within the center. Previously approved uses were office, business, professional, public, retail, and fitness center while requested additional uses are restaurant, music or art studios, and personal services. City Council must approve the addition of these uses to the list of permitted uses. Mr. Hazzard stated that the applicant is in attendance and asked if there were any questions for the City or the applicant.

Larry Rogers, of the Partners for Economic Progress at 140 4th Ave W, asked if the building is already constructed. Mr. Hazzard affirmed that the building already exists and reiterated that this application only seeks to add permitted uses to property.

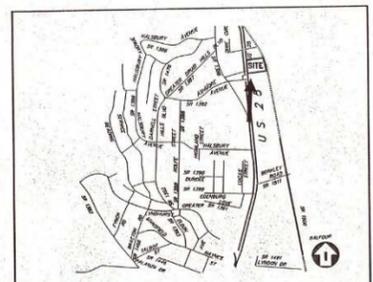
Ken Fitch, of 1046 Patton Street, asked if there are there any specific clients that want to occupy the space. Mr. Hazzard answered that the City doesn't address any particular proposed occupants during the process, only the use generally, but suggest that property owner may be willing to speak to that point. Kevin Hoover, applicant, briefly spoke about some possible lessees that he may pursue.

Mr. Fitch then asked if the parking requirements would change for a restaurant. Mr. Hazzard

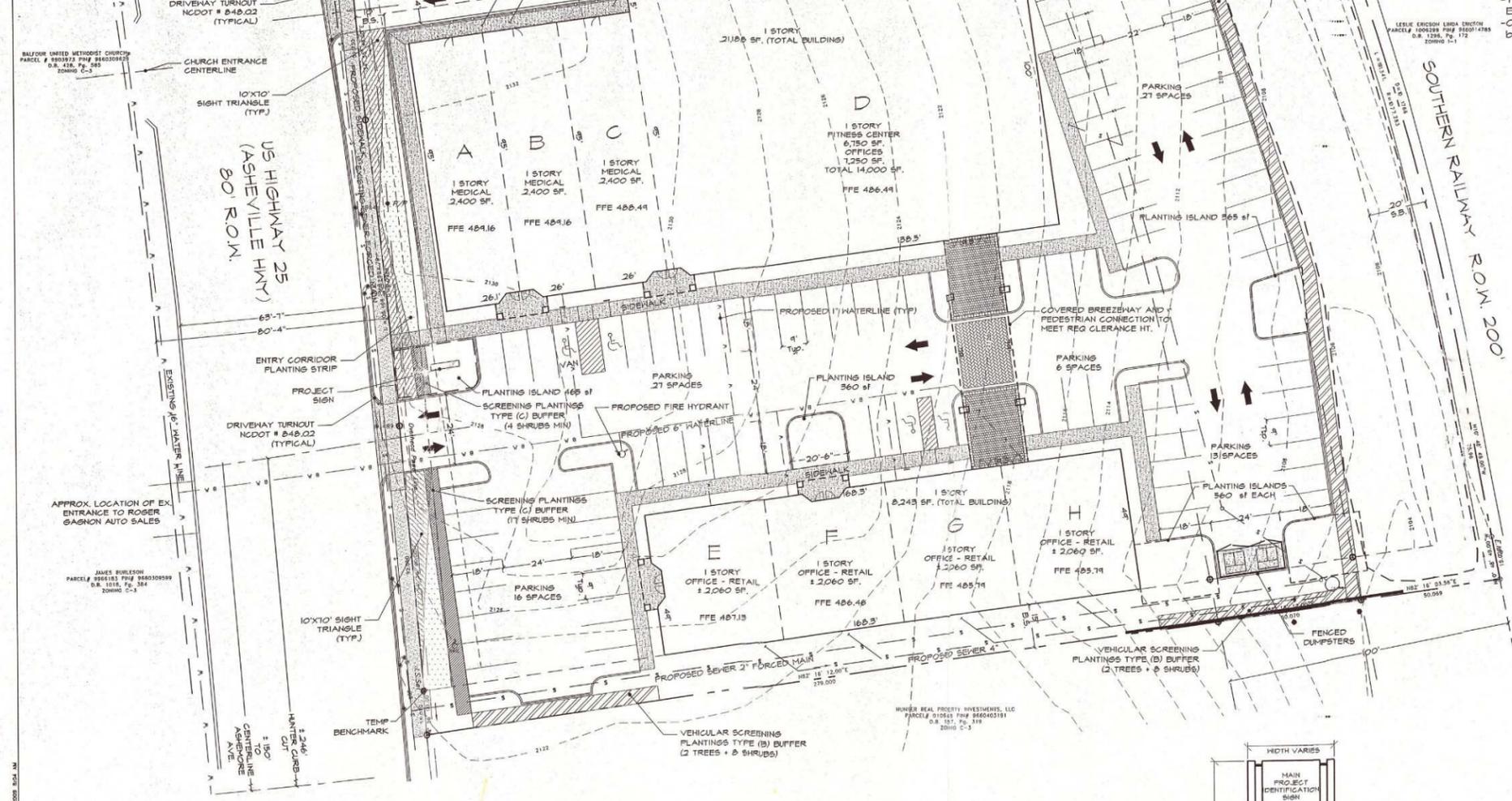
stated that the Development Assistance Department will approve that they meet the parking requirements before the use is put into service. Mr. Hoover stated that they have room to add more parking if it is necessary.

Mr. Hazzard asked if there were any other questions, and with no further comments or questions, moved on to the next agenda item.





VICINITY MAP Not to Scale



PROJECT SUMMARY	
Total Project Area	±2.20 ac.
FIN No.	9660-40-2192
Existing Zoning	C-3
Proposed Zoning	C-3 SU
Proposed Use	Commercial/Office/Retail
Site Coverage	
Building	31,780 sf (33%)
(Includes porches, canopy, etc.)	
Open Space	32,632 sf (34%)
Common Open Space	4,950 sf (10%)
Parking	32,009 sf (33%)
48'	
Max Building Height	Mountain Home
Water District	Public
Sewer	Private
Trash	Private

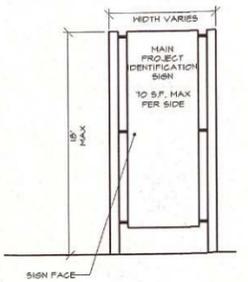
-No portion of the site is within the 100 yr Floodplain.  
 -The project is located within the City of Hendersonville ETJ district.  
 -Open Space and Common Properties to be maintained by the property Owner/Property Owners Association.

LANDSCAPE REQUIREMENTS	
5-10-4.6 H.Z.O. STREET TREES	REQ. TREES 7
15-4 H.Z.O. VEHICULAR USE AREAS	REQ. TREES 4 SHRUBS 15
	TREES 19 SHRUBS 81 TREES 21 SHRUBS 21

SOME TREES AND SHRUBS REQUIRED FOR VEHICULAR USE AREA A MAY BE COVERED BY OTHER LANDSCAPE REQUIREMENTS. HALF OF THE REQUIRED TREES AND SHRUBS TO OCCUR IN PARKING LOT ISLANDS. ALL PARKING SPACES SHALL BE WITHIN 65' OF A TREE.  
 LOCATION, TYPE, AND SIZE OF VEGETATION TO BE DETERMINED ON FINAL SITE PLAN AND TO MEET THE CITY OF HENDERSONVILLE ORDINANCE.

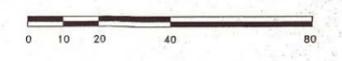
BUILDING SUMMARY					
BUILDING	PROPOSED USE	PROPOSED FLOOR AREA	MAX HEIGHT	REQUIRED PARKING	
A	MEDICAL	MAIN FLOOR: 2,400 SF	48'	2,400SF @ 6 PER DOCTOR EMPLOYEE @ 1 PER	6 2 8 SPACES
B	MEDICAL	MAIN FLOOR: 2,400 SF	48'	2,400SF @ 6 PER DOCTOR EMPLOYEE @ 1 PER	6 2 8 SPACES
C	MEDICAL	MAIN FLOOR: 2,400 SF	48'	2,400SF @ 6 PER DOCTOR EMPLOYEE @ 1 PER	6 2 8 SPACES
D	FITNESS/OFFICE	OFFICE: 7,250 SF FITNESS: 6,750 SF	48'	OFFICE @ 1 PER 400SF FITNESS @ 1 PER 100SF	19 62 81 SPACES
E-H	OFFICE	TOTAL: 8,245 SF	48'	RETAIL-OFFICE @ 1 PER 200SF	42

TOTAL SPACES REQUIRED=153 \*TOTAL SPACES PROVIDED=81 \*\*INCLUDES 4 HANDICAP ACCESSIBLE SPACES  
 5-1B-4.7 ENTRY CORRIDOR 20% REDUCTION = REQ. 123



SIGN DETAIL Scale: 1"=1'-0"

PRELIMINARY SITE PLAN Scale 1"=20'-0"



RECEIVED  
 CITY OF HENDERSONVILLE, NC  
 ON: 12-23-08  
 BY: [Signature]

Submitted to City of Hendersonville for Preliminary Site Plan Approval 1 December 2008.

**Luther E. Smith & Associates, P.A.**  
 LAND PLANNERS  
 LANDSCAPE ARCHITECTURE  
 127 Wood Avenue West  
 Hendersonville, NC 28702  
 (828) 697-2307  
 (828) 697-8938 Fax  
 luther@lesmith.net

**THE TOWN CENTER**  
 (FORMERLY THE HOOVER PROPERTY)

**THE TOWN CENTER**  
 OWNER/DEVELOPER: KEVIN HOOVER  
 P.O. BOX 975  
 FLETCHER, NC 28752

CONTACT: SCOTT WISHCOW  
 950 OVERHILL DR.  
 HENDERSONVILLE, NC 28742  
 (828)642-6285 cell:(828)614-6565

LAND PLANNER/  
 LANDSCAPE ARCHITECT: LUTHER E. SMITH & ASSOCIATES, P.A.  
 127 5RD AVENUE WEST  
 HENDERSONVILLE, NC 28742  
 828 647-2507

SURVEYOR: LAUGHTER AUSTIN & ASSOCIATES  
 131 4TH AVE. EAST  
 HENDERSONVILLE, NC 28742  
 (828)642-1084

ENGINEER: MOUNTAIN ENGINEERS CO.  
 121 3RD AVENUE WEST SUITE 2  
 HENDERSONVILLE, NC 28742  
 (828)647-2122

PRELIMINARY SITE PLAN

S-2  
 OF - 2

## **APPEAL OF DEVELOPMENT DECISIONS**

Section 7-13 of the Zoning Ordinance outlines the process for appeal of development decisions by City Council. The following Sections of the Zoning Ordinance apply specifically to Special Use Review:

**Section 7-13-2 (b): Preliminary site plans.** Decisions of the City Council regarding appeals from development decisions concerning applications for preliminary site plan approval may be appealed to the Superior Court by any aggrieved party. Such appeals shall be in the nature of certiorari and must be filed within 30 days after the filing of the decision in the office of the City Clerk or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the Clerk at the time of the hearing, whichever is later. The copy of the decision of the Council may be delivered to aggrieved parties either by personal service for by registered mail or certified mail return receipt requested.

**Section 7-13-2 (d): Special use review.** Judicial review of decisions regarding applications processed under the provisions of special use review, established in Section 7-4, above, require special treatment due to the fact that they involve two separate applications which, though processed simultaneously, require Council to make two separate decisions exercising two different types of decision-making authority. One application requests enactment of an ordinance amending the Official Zoning Map, and the other requests issuance of a special use permit. The first application involves a legislative decision on the part of Council, and the second a quasi-judicial decision. The quasi-judicial decision, that is, the one concerning the application for a special use permit, may be appealed to the Superior Court by any aggrieved party in the manner prescribed in paragraph b), above. Such appeal shall be in the nature of certiorari. The legislative decision, which is the one concerning the request for rezoning, may be contested, in accordance with NCGS Section 160A-364.1, by a cause of action commenced within two months of the date of the decision.

The validity of the ordinance may be challenged in accordance with North Carolina General Statute Section 160A-364.1.

### **§ 160A-364.1. Statute of limitations.**

A cause of action as to the validity of any zoning ordinance, or amendment thereto, adopted under this Article or other applicable law shall accrue upon adoption of the ordinance, or amendment thereto, and shall be brought within two months as provided in G.S. 1-54.1. (1981, c. 891, s. 3; 1995 (Reg. Sess., 1996), c. 746, s. 7.)

## MEMORANDUM

**TO:** Planning Board  
**FROM:** David T. Hazzard  
**RE:** South Market Village  
**FILE #:** P15-16-SUR  
**DATE:** August 31, 2016

### PROJECT DESCRIPTION

The City is in receipt of an application to amend a Special Use Permit from Halvorsen Development Corporation to construct a 49,098 ft<sup>2</sup> grocery store located on the corner of White Street and Greenville Highway. This project was previously approved by City Council at their regular meeting on January 7, 2016. The applicant has made the following modifications to the approved Preliminary Site Plans and variance requests:

- Modification of the area on the east side of Mud Creek in an effort to receive a No Rise certification from FEMA. This modification includes: grading; removing the required and previously proposed vegetation; and installing riprap along the eastern bank of Mud Creek.
- A variance request to remove the required bufferyards and landscaping for Vehicular Use Area vegetation on the east side of Mud Creek.
- Modification of a previously approved variance to allow for development within the 30' stream buffer and 20' transition zone for Mud Creek.

Generally, minor modifications to approved Preliminary Site Plans are only subject to staff review and approval. However, because the proposed changes require modifications of variances previously granted by City Council, an amended Special Use Permit approved by City Council is required.

The following parcels are part of this application:

PIN 9568-84-0380  
PIN 9568-84-1291  
PIN 9568-84-0002  
PIN 9568-73-9994  
PIN 9568-84-2176

PIN 9568-84-2052  
PIN 9568-83-1970  
PIN 9568-83-3809  
PIN 9568-83-2720

## **EXISTING LAND USES & ZONING**

The proposed project consists of nine parcels and has a total area of approximately 6.86 acres. All of the parcels are vacant or soon to be vacant. The existing zoning classifications for these parcels are PCD and are shown on the Zoning Map on page 22.

Surrounding land uses can be seen in the aerial view map on page 22. To the north of these parcels are White Street, a bank zoned C-3 Highway Business, and a strip mall that includes a grocery store zoned CMUSU Commercial Mixed Use Special Use. To the east are Greenville Highway and a mix of commercial, retail, business, and restaurant that are zoned C-3 Highway Business. To the south are a gas station zoned C-3 Highway Business, a vacant parcel zoned PCD Planned Commercial Development, and a vacant City owned parcel zoned R-20 Low Density Residential. To the west are Mud Creek and parcels that include: a business zoned R-15 Medium Density Residential; and two vacant parcels, a parcel with single family residential use, and a parcel with a business – all zoned C-2 Secondary Business.

## **COMPREHENSIVE PLAN CONSISTENCY**

The parcels included in this project and adjacent parcels are classified as Neighborhood Activity Center and Natural Resource Agricultural on the 2030 Comprehensive Plan's Future Land Use Map.

The goal of the Neighborhood Activity Center is to “concentrate retail in dense, walkable mixed-use nodes located at major intersections in order to promote a sense of community and a range of services that enhance the value of Hendersonville’s neighborhoods.”

The goal of the Natural Resource/Agricultural classification is to “create an interconnected network of green infrastructure that preserves environmentally sensitive areas, protects water resources through low-impact stormwater management, provides floodwater storage, provides community open space and recreational opportunities, and preserves agricultural resources.”

Comprehensive Plan consistency is addressed under “E” on page 7. The Comprehensive Plan Future Land Use Map is located on page 23.

## **PLAN REVIEW**

### **General**

The approximately 6.86 acre site currently has eight main buildings and associated parking. The applicant is proposing to replace the existing buildings with a 49,098 ft<sup>2</sup> grocery store and a vehicular use area that includes 246 parking spaces.

### **Buildings**

The proposed building is 49,098 ft<sup>2</sup> and the maximum building height is 40'. The Preliminary Site Plan, landscape plan, and architectural elevations showing proposed façades are included with this memorandum on pages 24 through 26.

### **Parking**

The site plan shows 246 parking spaces. Table 6-5-2 requires a minimum of 246 spaces based on one space per each 200 ft<sup>2</sup> of gross floor area for grocery stores.

### **Sidewalks**

A sidewalk is shown along the parcel fronting on White Street and Greenville Highway. This sidewalk connects White Street and Greenville Highway to the proposed building.

### **Street Closing**

Existing Market Street and its right of way are currently located on this site and are the only access to the City owned parcel # 9568-73-9217 to the south. The site plans indicate "existing Market Street R/W to be vacated..." and have proposed a "variable width access easement" to the City parcel # 9568-73-9217. This has been added to the List of Uses and Conditions.

### **Redevelopment in the Floodway and Special Flood Hazard Area**

The entire site for this project is located in the floodway and is shown on the Stream and Flood map on page 23.

Section 17-2-4 of the Zoning Ordinance allows redevelopment to occur on existing developed sites which no longer function as natural flood plain and when such redevelopment will not result in any further loss of flood-plain functionality. This section states:

"Where feasible, redevelopment proposals should demonstrate an improvement in the site's functionality as a flood plain. In light of this intent, redevelopment of existing developed sites shall be permitted within the floodway and special flood hazard area only when the applicant has satisfactorily demonstrated the following:

- a) The proposal is to redevelop an existing developed site as of the date of this ordinance evidenced by substantial coverage of the site by buildings, fill, gravel or paved drives or parking areas or other impervious surfaces.
- b) There shall be no loss of flood storage capacity on the site as a result of the redevelopment.
- c) The applicant, utilizing best management practices, shall reduce the post-redevelopment rate of stormwater runoff from the pre-redevelopment rate of runoff, if feasible. In any event, the post-redevelopment rate of runoff shall not be greater than the pre-redevelopment rate.

- d) The project design, including any best management practices (BMPs) will result in a project which is consistent with the purposes of the Natural Resources Protection Ordinance as stated in Section 17-1. In this regard, the applicant shall demonstrate the following:
- 1) The project shall not degrade the quality of the water in creeks, streams, ponds and lakes that flow into and out of the City.
  - 2) The project shall not contribute to future flooding problems.
  - 3) The project preserves the water carrying capacity of watercourses and the natural water storage of the special flood hazard area.
  - 4) The project protects land and watercourses from pollutants, sedimentation and erosion.
  - 5) The project retains open spaces in order to protect their environmentally-sensitive character; and
  - 6) The project protects and conserves significant natural resources from degradation due to urbanization.
- e) The applicant shall comply with all relevant provisions of the Flood Damage Prevention Ordinance including obtaining a no-rise certificate, if needed.”

### **Stormwater**

The applicant will be improving the site’s stormwater management and will be meeting current Phase II stormwater management requirements.

### **Landscaping**

Required planting buffers areas are shown on the preliminary site plan. Actual plantings are shown on landscaping plans that are submitted with the final site plan. Note the applicant is requesting a variance from some of the buffer requirements as noted on page 5.

### **Traffic Impact Analysis (TIA)**

Zoning Ordinance Section 6-19 requires a Traffic Impact Analysis (TIA) whenever a development generates 100 peak hour or 1000 or more trips daily. A “trip” is a one-direction vehicle movement entering or exiting a site.

A TIA has been completed by Kimley-Horn & Associates and has been reviewed by Mattern & Craig, at the request of the City. This TIA was based on a store size of 49,098 ft<sup>2</sup>. Based on the Institute of Transportation Engineers *Trip Generation* manual, a 49,098 ft<sup>2</sup> grocery store is estimated to generate a total of 4,277 daily trips.

As per the TIA by Kimley Horn, “the following improvements are recommended to mitigate the impact of the proposed development on the adjacent street network”:

### **Greenville Hwy (NC225) at White Street**

- Extend the existing eastbound right-turn lane on White Street to maximize storage while tapering to a single lane just east of proposed driveway on White Street.

### **Greenville Hwy (NC225) at Copper Penny Street**

- Construct a northbound left-turn lane with a minimum of 100 feet of storage
- Construct a southbound right-turn lane with a minimum of 50 feet of storage

The site plan as shown on page 24 meets or exceeds all of the recommended improvements as stated above. Also note Greenville Highway and White Street are NCDOT roads. NCDOT must authorize all improvements before the City can approve final site plans.

### **Rezoning**

The parcels within this project have been rezoned to PCD Planned Commercial Development.

## **Variance Requests**

### **Stream Buffers**

**Section 17-3 Stream Buffer Protection Standards.** The primary objective of stream buffer protection standards is to maintain land adjacent to streams in an undisturbed vegetated state in order to enhance and maintain water quality, protect stream channel wetlands, minimize stormwater runoff, reduce sedimentation and erosion, conserve plant and wildlife habitat and protect wildlife movement corridors. The standards contained in this section will further this objective (1) by regulating water temperature through shading of the stream bed, (2) by limiting sedimentation from streambank erosion and stormwater flow, and (3) by supporting aquatic life through the provision of organic debris such as leaves and twigs.

The Zoning Ordinance requires all “blue line” streams to have a thirty foot stream buffer and a twenty foot transition zone as measured from the top of stream bank. The thirty foot stream buffer shall remain in natural undisturbed forest vegetation and no development or land-disturbing activities shall be undertaken within this area. The twenty foot transition zone may be graded, landscaped and/or used for pedestrian or vehicular purposes so long as no impervious materials are utilized.

Mud Creek runs along the western border of this project and Johnson Ditch runs along the southeastern border, both of which are identified as “blue line” streams on the U.S. Geologic Survey map. The site plan shows the proposed building and asphalt vehicular use area in the transition zone and a wall and asphalt vehicular use area in the stream buffer.

The applicant is requesting a variance from Section 17-3-3. As per the variance application, “the existing developed condition within the 30’ and 20’ stream buffer are

more impactful to the buffer than the proposed condition.” The applicant has included a stream buffer exhibit showing the pre-development and post-development conditions which is on page 27. Also, the application for this variance request is on pages 17 and 18.

### **Buffering, Screening and Landscaping**

**Section 15-6 Bufferyards and 15-9b Landscaping for Vehicular Use Areas.** Certain land uses may create an adverse impact when developed adjacent to other less intensive land uses. A bufferyard is a permanent unit of land together with plantings and structure(s), if any, which is designed to mitigate such adverse impacts.

The western property line has approximately 115 linear feet along Mud Creek which is adjacent to either residential use or residential zoning. Section 15-6-3 of the Zoning Ordinance requires a 10' Type B buffer along this area. The western property line has approximately 410 linear feet adjacent to a commercial use or commercial zoning which as per Section 15-9b of the Zoning Ordinance requires a 5' planting strip. In total 16 trees and 119 shrubs would be required along the western property boundary.

The applicant is requesting a variance from Sections 15-6 and 15-9b of the Zoning Ordinance to eliminate the 10' Type B buffer and the 5' planting strip along the western property boundary. The application for this variance is on pages 19 and 20.

## **ANALYSIS**

Section 7-4-10.1 of the Zoning Ordinance states, “no special use permit shall be approved by City Council unless each of the following findings is made”:

- (A) The use or development is located, designed, and proposed to be operated so as to maintain or promote the public health, safety, and general welfare.

**Staff has not identified any issues relating to public health, safety, or general welfare.**

- (B) There are, or will be at the time they are required, adequate public facilities to serve the use or development as specified in Section 7-11.

**The property is currently served by water and sewer. Modifications to the adjacent public streets are proposed to address traffic issues.**

- (C) The use or development complies with all required regulations and standards of the Zoning Ordinance or with variances thereto, if any, granted pursuant to Section 7-4-14, and with all other applicable regulations.

**The applicant is requesting the following variances:**

**#1 A variance from Zoning Ordinance Section 17-3-3, to allow the proposed**

**building and asphalt vehicular use area in the required stream transition zone and to allow a wall and asphalt vehicular use area in the required stream buffer.**

**#2 A variance from Zoning Ordinance section 15-6-3 and 15-9b, to eliminate the 10' Type B buffer and the 5' planting strip along the western property boundary.**

**Variance request applications and justifications begin on page 17.**

(D) The use or development is located, designed, and proposed to be operated so as to be compatible with the particular neighborhood in which it is to be located.

**A neighborhood compatibility meeting concerning the application was held on September 2, 2016. Notice was provided by U.S. mail to the owners of record of all property situated within 400 feet of the subject property.**

**Approximately 10 members of the general public attended the meeting. The general public asked questions regarding the following:**

- **Flooding**
- **Stormwater**
- **Stream buffer vegetation**
- **Height of the retaining wall**

**A copy of the neighborhood compatibility report accompanies this memorandum on pages 11 through 16.**

(E) The use or development conforms to the general plans for the physical development of the City as embodied in this Ordinance and in the *Comprehensive Plan* and the *Comprehensive Transportation Plan*.

**The 2030 Comprehensive Plan's Neighborhood Activity Center category is intended to "concentrate retail in dense, walkable mixed-use nodes located at major intersections in order to promote a sense of community and a range of services that enhance the value of Hendersonville's neighborhoods."**

**The 2030 Comprehensive Plan's Natural Resource/Agricultural classification is intended to "create an interconnected network of green infrastructure that preserves environmentally sensitive areas, protects water resources through low-impact stormwater management, provides floodwater storage, provides community open space and recreational opportunities, and preserves agricultural resources."**

**The 2008 Comprehensive Transportation Plan has the following recommendations:**

**C17 NC225 “Greenville Highway” Add turn lanes, widen shoulders and improve intersections between Spartanburg Highway and Erkwood Drive.**

**C19 White Street. Construct three lane connector replacing existing segment of White Street between Greenville Highway and Kanuga Road.**

## **SUGGESTED MOTIONS**

### **Variance Request #1**

#### **Recommend Approval:**

I move the Planning Board to recommend City Council approve a variance from Zoning Ordinance Section 17-3-3, to allow the proposed building and asphalt vehicular use area in the required stream transition zone and to allow a wall and asphalt vehicular use area in the required stream buffer as shown on the Preliminary Site Plan.

**[PLEASE STATE YOUR REASONS]**

#### **Recommend Denial:**

I move the Planning Board to recommend City Council not approve a variance from Zoning Ordinance Section 17-3-3, to allow the proposed building and asphalt vehicular use area in the required stream transition zone and to allow a wall and asphalt vehicular use area in the required stream buffer as shown on the Preliminary Site Plan.

**[PLEASE STATE YOUR REASONS]**

### **Variance Request #2**

#### **Recommend Approval:**

I move the Planning Board to recommend City Council approve a variance from Zoning Ordinance sections 15-6-3 and 15-9b, to eliminate the 10' Type B buffer and the 5' planting strip along the western property boundary.

**[PLEASE STATE YOUR REASONS]**

**Recommend Denial:**

I move the Planning Board to recommend City Council not approve a variance from Zoning Ordinance sections 15-6-3 and 15-9b, to eliminate the 10' Type B buffer and the 5' planting strip along the western property boundary.

**[PLEASE STATE YOUR REASONS]**

**Special Use Permit**

**Recommend Approval:**

I move the Planning Board to recommend City Council approve the application of South Market Village for a Amended Special Use Permit based on the site plan submitted by the applicant and subject to the limitations and conditions stipulated on the published List of Uses and Conditions.

**[PLEASE STATE YOUR REASONS]**

**Recommend Denial:**

I move the Planning Board to recommend City Council not approve the application of South Market Village for issuance of a Special Use Permit.

**[PLEASE STATE YOUR REASONS]**

**IN RE: South Market Village (File # P15-16-SUR)**

**List of Uses & Conditions**

**I. Stipulated Uses:**

**Only the following uses are authorized for the referenced development:**

Retail Stores

**II. Conditions:**

**(1) Shall Be Attached to the Special Use Permit and Satisfied Prior to Issuance of Final Site Plan Approval:**

Submit a street closing application to close the Market Street right of way. A public hearing will need to be held by City Council prior to determining whether or not to close Market Street. This public hearing is required to be held prior to final site plan approval.

Provide an access easement that is satisfactory to City staff to the City owned PIN 9568-73-9217.

Recombination of all parcels or portions thereof included in this Special Use application prior to issuing of a Certificate of Occupancy.

The applicant shall comply with all relevant provisions of the Flood Damage Prevention Ordinance including obtaining a no-rise certificate, if needed.

**(2) Shall Be Attached to the Special Use Permit:**

Final plans for the project shall comply with approved plans, the conditions agreed to on the record of this proceeding and applicable provisions of the Zoning Ordinance.

South Market Village

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

Planning Director's Report  
 Neighborhood Compatibility Meeting  
 Application for an Amendment to a Special Use Permit  
 South Market Village File #P15-16-SUR  
 Thursday, September 1, 2016      2:30 p.m.

Dave Hazzard, Senior Planner, convened the compatibility meeting at 2:34 pm in the Assembly Room of the City Operations Center. The following were in attendance:

<i>Name</i>	<i>Address</i>	<i>Name</i>	<i>Address</i>
Sam Winfield	3675 Spartanburg Hwy	Ed Baynard	none given
Eric Hampton, Applicant	200 S. Tryon Ste 200, Charlotte, NC	Michael Prats	White Street
Jason Diaz, Applicant	200 S. Tryon Ste 200, Charlotte, NC	Kevin Hoover	27 Cape Martin Circle
Larry Rogers, PEP	140 4th Ave W	Susan Frady, Staff	100 N. King Street
Jim Barnette	640 Greenville Hwy	Dave Hazzard, Staff	100 N. King Street
Tony Bloomsman	800 Greenville Hwy	Emily Sisler, Staff	100 N. King Street
Marilyn Conchini	15 S. KuyKendall		
Robert Ebert	66 S. Kuy Kendall		
Jim and Diane Burns	150 White St.		
Jim Hall, Hunting Creek Associates	104 Mull St Morganton, NC		
Ken Fitch	1046 Patton Street		

Mr. Hazzard explained that we have two items on the agenda that are both in the process of amending the special use permit and further explained the process of amendment. He stated that the projects were previously approved but that there have been changes since approval which require an amendment to the original permit. Mr. Hazzard stated that the goal of a Neighborhood Compatibility meeting is to have an informal discussion between the developers and citizens in which citizens can ask questions and make suggestions and the applicant can get feedback from the public. Mr. Hazzard stated that next the application will go before the Planning Board and will then be forwarded to City Council where it will be considered during a quasi-judicial hearing.

Mr. Hazzard moved to this agenda item once commencing the first item at 2:41pm. Using a map, Mr. Hazzard oriented the audience to the property and stated it is a grocery store. The original permit was approved by City Council on January 7, 2016, and the current application is for an amended site plan. Most of the changes to the plan are due to the applicant trying to achieve a “no-rise” certificate based on the floodway area. Mr. Hazzard reiterated the amended special use permit process and explained that those who were notified for the Neighborhood Compatibility Meeting will again be notified for both the upcoming Planning Board and City Council meetings at which time this application will be considered. Mr. Hazzard then introduced Eric Hampton and Jason Diaz of Kimley-Horn, as representatives of the applicant.

Mr. Hampton stated that the only significant change that has occurred since the last time the plan was reviewed is on the westernmost edge of the store. The building is in the same spot; the perimeter/development is the same, the access is the same. All of that is exactly the same as to what was proposed previously. What has changed is along the creek edge on the back of the store. Mr. Hampton further explained that as the FEMA process and coordination with the City

and State evolved, a change was made to the previously proposed change to the existing buffer condition along the creek edge. Mr. Hampton made a presentation using maps to show the existing conditions vs. the proposed conditions and explained that the existing required buffer was largely impervious in both stream buffer zones. He also stated that the proposed conditions have kept some wooded area (that the existing conditions don't have), use a rip-rap barrier, and have more open space to largely maintain the imperviousness overall. Mr. Hampton offered Jason Diaz, engineer with the firm, to explain the technicalities.

Kevin Hoover, of 27 Cape Martin Circle, Hendersonville NC, asked how they will catch excess water. Mr. Hampton stated there is an underground detention system that complies with all stormwater rules.

Mr. Diaz gave a brief history of modeling that has been completed and explained why changes were made to the plan. He stated that in the beginning, the creek buffer area was filled with trees and vegetation creating a "snag" area: blockage and roughness which slows the water down and actually makes the flooding conditions a little bit worse. In order to offset that flooding, they had to increase the wall height creating a bench along the stream to give more area for the water to spread out. The rip-rap was added to make it smoother so that water can move freely back and forth through the area more easily without blockages. The combination of increasing the walls, lowering the bench, and putting the rip-rap in place created a no rise situation. Mr. Diaz continued by stating that the model shows no increase in any flood event for any of the areas adjacent to the site and that the model is currently being reviewed by the City's consultant and the State.

Mr. Hoover asked where the water that used to flood the property goes now. Mr. Diaz explained that the bridge area controls the water flow at the site, so the volume of water doesn't change.

Mr. Hoover stated that the road has flooded in the past. Mr. Diaz answered that there will be no change in the flooding according to the model. Mr. Hoover asked if Publix will be on a little island if the road floods. Mr. Diaz explained that the requirement is to elevate the building 2 feet above the one hundred year elevation. The drives and parking areas are at that same level. Mr. Diaz continued speaking about the past buildings getting flooded pretty often and stated that this new development eliminates that situation and creates a better situation for the building.

Mr. Hampton explained that the number of buildings and vertical walls that were existing had an impact on the flood waters. They served as a barrier to the water increasing flooding. The removal of those building is largely how they offset a lot of the fill for the size of the Publix going in. The vegetation that was originally proposed along the western shelf at the creek gave an opportunity for debris to gather and impeded the flow of water. Removing that vegetation gave a lot of the efficiency to the way the model works.

Jim Barnette, of 640 Greenville Hwy, stated that he is going to come up and ask a few questions about the flooding. Mr. Barnette stated that he has been in every flood since the 1960s and wants to hear how the developers think the water comes in during a flood.

Mr. Diaz answered that he has never seen the flood in person but explained how the model shows water movement during flooding using the map.

Mr. Barnette suggested that movement is consistent with major floods and explained in detail how small floods always come through the Johnson Drainage Ditch creating a 500-ft wide area of flooding. Mr. Barnette stated that the plan in question places a raised wall near the ditch which will force the water from a 500-ft wide stream to a 100-ft wide stream creating a deeper, faster, more damaging flood scenario. Mr. Barnette stated that he has seen the water come down there

so fast sometimes in the big floods that it will rip up the asphalt in the parking lots. Mr. Barnette continued by asking if there is a purposeful intention to damage property downstream.

Mr. Hampton stated that they don't want to damage property downstream intentionally or unintentionally.

Mr. Barnette stated that in the military, if you bring up a problem, you're supposed to have an alternate plan. He has submitted an alternate plan before and would like to know why it has not been incorporated.

Mr. Barnette stated that he will talk through that: the alternate plan included the settling ponds. It did not have the anticipated impact. This presented plan is the backup plan to the backup plan. The previous plan included two large settling ponds on the City's property, but those ponds don't have an impact on the flooding. They provide some settling area and can have some other benefits, but from a flood volume standpoint, the drainage ponds have no dramatic impact. Mr. Diaz stated that in fact, it made it worse.

Mr. Barnette stated that he understands the ponds would not help during a large flood but reiterated that they would help in a smaller flood. Mr. Diaz stated that while it did make a difference on the ten year event, the permit requires a no-rise during the large flood. Flood volume was increased when that area was included due to vegetation.

Mr. Hampton asked Mr. Diaz to address the concern of the project causing a flood problem that is worse than today.

Mr. Barnette stated that they must be causing worse flooding. Mr. Hampton stated that the problem is not a one variable to one variable scenario. Mr. Diaz explained the basics of how hydraulics works and reiterated that the bridge is controlling the water flow of the entire area. Because they aren't changing how the bridge functions, the water will act like it always has. Mr. Diaz continued by stating that the culvert (Johnson Ditch) is not sized for the volume of water, but that it is a DOT culvert and right-of-way.

Mr. Barnette again stated that they are not taking into account smaller floods and are only addressing larger floods. Mr. Hampton reiterated that the amendment they are seeking is only concerned with the area near the creek. Everything else has already gone through the process and been allowed. From a flood standpoint, what they are proposing here as a change is actually a betterment than having the previously-approved vegetation. He reiterated that all the meeting is concerned with today is the change to the buffer area near the creek. Mr. Barnette stated that he understands that is what they want to talk about but that he is worried about the flooding.

Mr. Barnette asked if there will be separate discussions concerning the flooding. Mr. Hampton stated that the amendment to the variance that is being sought is for the change in the buffer. Nothing else – the height, the fill, the wall, all of that is consistent with what the current approvals already allow us to do. The only change to the plan is on the western buffer.

Mr. Barnett again asked if the flooding will be addressed in the future, as the project is going to create more flooding. Mr. Hampton stated that he is trying to explain that they will not create more flooding.

Jim Hall, of Hunting Creek Associates, interjected and explained that his partnership developed what is the T.D. Bank building which required a no-rise permit. Mr. Hall asked if it is correct that the no rise certificate requires you to show that the project is not creating any greater runoff than what the existing structures were. Mr. Hampton stated that Mr. Hall is correct. Mr. Hall continued by stating that he assumes that, as it applies to this site, they have been able to demonstrate already that the additional structures don't increase flooding; they just take the place

of the ones that were already there. He stated that he is all for the addition of the retention ponds if they help with the flooding, but it appears they have been able to show that the retention ponds don't do any good. Mr. Hampton agreed and quantified that the ponds do not help from a flood impact standpoint. The no-rise terminology means that there is not the impact Mr. Barnette is alluding to and that they are not creating a situation that is more detrimental downstream. Mr. Hampton further stated that it all has to do with those vertical flow faces, those existing buildings, the roughness of the ground, etc., and that the model includes many different variables that just comparing one small change to another doesn't account for. Mr. Diaz stated that while flow paths may change, the elevation of the water will not. He further stated that the models show reductions in the elevation of the water in some of the smaller events because of this proposed change.

Mr. Barnette indicated that he still does not agree with the model's analysis. Mr. Hampton continued to explain that the flood is long and shallow and that the previous structures' effect on the water flow caused the water to rise. The removal of the buildings more than compensates for the five foot rise near the ditch. Mr. Hampton and Mr. Diaz continued to reiterate that the situation is not a one-variable-to-one-variable analysis and that it is a lot more complicated than that.

Mr. Barnette stated that he noticed in the report that the report is not guaranteed or warranted, so there must be some possibility that the model is incorrect. Mr. Diaz stated that that is not true and explained that for a no rise, he is required to sign and seal the model, putting his professional license on it. Mr. Diaz continued to explain that he believes what Mr. Barnette is referring to is on a map, and explained that he can't sign and seal topographic information because he is not a surveyor. What the report states is that the modeling is done by a professional engineer and that it's to the standards of the engineering community, but that the engineer did not survey the land. Mr. Barnette indicated that he believes the report is wrong, offered a guarantee that there will be more flooding than in the past, and suggested that he will pursue a settlement for any future damages to his property. Mr. Diaz stated that the City's outside consultants and the State are both reviewing the model for accuracy. Mr. Hazzard reiterated that the State and the City's independent consultant will both be reviewing the model for accuracy and told Mr. Barnette that he will have the opportunity to go before the City Council and have his voice heard during the hearing.

Mr. Hampton prompted other members of the audience to ask questions.

Jim Burns, of 150 White Street, asked how high the wall will be along the creek. Mr. Hampton answered that it will be 5-ft to 8-ft tall. Mr. Burns asked if it will be built on top of the ground raised by the previous owner. Mr. Hampton answered that the wall will be down the slope from the existing development and right at the top of the creek bank. Mr. Hampton and Mr. Diaz both explained the range of the wall and showed its tallest point using the map as a guide.

Mr. Burns asked if Mr. Hazzard can tell him if a wall on his side of the creek would be allowed and how high it should be built. Mr. Hazzard answered that a no-rise certificate would be required, as is the requirement for anyone building in the floodway. The process requires a model. Mr. Hampton reiterated that the height of the wall is dependent upon the needs shown within modeling.

Mr. Hoover asked if the creek will be dredged. Mr. Hampton stated that the creek will not be touched. Mr. Diaz stated that a federal permit is required to do anything like that.

Diane Burns, of 150 White Street, stated that she is sure they will get flooded with the addition

of a wall on the creek. Mr. Diaz again explained that the proposed development doesn't change anything that is happening now out there based on the models and third-party verification at the State. Mr. Hampton again explained that the nature of the no rise means that whatever they are proposing has no impact on whatever is going on. Mr. Hampton clarified that they are not suggesting to solve any existing problem or disagreeing that there is currently an issue; they are just saying that the new condition vs. what was there before are, from a flood standpoint, equivalent. Mr. Diaz further explained the complexity of the models: they are calibrated, rechecked, and contingencies taken into account. It is very precise. There is a lot of work that goes into proving the no-rise (and a lot of money).

Ed Baynard, no address given, stated that there isn't proper drainage down at the end of White Street either. Mr. Hampton explained that when you get flooding and water is allowed to sit, it deposits a lot of sediment. A lot of the structures were filled with debris and sand and dirt, so that affects the water flow as well.

Mr. Baynard suggested that the creek doesn't suck the water out like it is supposed to. Mr. Hampton stated that all of outflows will be hitting the creek where the need to and that all of that is being fixed.

Mr. Hoover asked if DOT is planning to enlarge the pipe (in their culvert). Mr. Hampton stated that as far as they know, there is no plan. Mr. Hoover asked if enlarging the pipe would help with the flooding. Mr. Hampton stated that it is his understanding that it would resolve some of the flooding in the spillover, but then what happens downstream has to be taken into account. Without doing a model on the downstream area, there is no way to know what kind of impact that would cause, and that it would take a large-scale basin study to deal with that. Mr. Hazzard stated that DOT is in the process of reviewing these plans from a drainage and transportation scenario, and the City will not sign off on final site plans until they have seen that DOT has signed off on the improvements.

Ken Fitch, of 1046 Patton Street, asked if the bridge is included in what DOT is looking at. Mr. Diaz stated that the project does not propose any modifications to the bridge. Mr. Hazzard stated that he believes DOT is looking at a long range goal to widen White St. which would require the replacement of the bridge; it is on their radar but very long range.

Larry Rogers, of Partners for Economic Progress, stated that DOT has recently said that they want to connect Spartanburg Hwy and White St. Mr. Hazzard affirmed that that is being discussed at DOT. Mr. Hampton assured that where their project has the curb line for the turn lane is in the ultimate location where DOT will need it once their future project commences. It has been coordinated with them.

Mr. Fitch inquired concerning the elimination of the vegetation on the buffer and asked what the new appearance of that area will be. Mr. Hampton explained that if you're standing on the western bank of Mud Creek looking back at the side, you're looking at an MSE retaining wall and a 6-12 in diameter Rip Rap bottom would be on the ground.

Mr. Rogers asked if the overflow ponds on the City's property are still going to be built. Mr. Diaz explained that the ponds caused an increase during the big storm events. Though there was a reduction in the small events, permitting requires adjustment to the large events.

Mr. Barnette asked for clarification that the models showed an increase in flooding with the ponds. Mr. Diaz confirmed that it did during big storm events. He further explained that the precision of the model and the review regulates down to two decimal points and that there was an increase in those couple of decimals.

Mr. Barnette asked if the ponds do help with the smaller floods. Mr. Diaz confirmed that it does, but that they cannot get a permit from the State or the City with the ponds in place because of the increase they cause during the bigger floods. Mr. Hampton stated that they took the plan with the ponds a long way into development before they had to change it once it reached the state level.

Mr. Rogers asked that since we know it is going to flood, if there is anything the applicant can do to help the business owners downstream. Mr. Diaz stated that the change they are proposing does actually have a benefit during the smaller events. It's not as much of an impact as the ponds were but this is the only way in 25 different scenarios that they have found to get a no-rise in the 100 year event.

Mr. Hall inquired as to the projected time-table for continuing the approval process. Mr. Hampton stated their goal is to have everything that is contingent on that variance approval (zoning, utility, stormwater, DOT) ready to domino on October 7 if the Council says yes at their meeting on October 6. Mr. Hazzard further explained the Special Use Review process and where this amendment fits into the process. He reiterated that the City won't sign off on the final site plan until all the other pieces from other agencies are in place and approved.

Mr. Hazzard asked the audience if there were any other questions for the City or the applicant, and reiterated that those that were notified will receive notice for the Planning Board meeting on September 12 and the City Council meeting on October 6 which are other opportunities to be heard.

With no further comments or questions, Mr. Hazzard closed the meeting at 3:32 p.m.

Print Form



CITY OF HENDERSONVILLE  
DEVELOPMENT ASSISTANCE DEPARTMENT  
100 N. King St. ~ Hendersonville, NC ~ 28792  
Phone (828) 697-3010 ~ Fax (828) 697-6185  
www.cityofhendersonville.org

**APPLICATION FOR A VARIANCE WITH SPECIAL USE PERMIT**  
Section 7-4-14 City Zoning Ordinance

The following are required to constitute a complete application for a variance:

- ~ This form including the property owner(s) signature(s).
- ~ Special Use Permit Application
- ~ Supporting documents, if applicable.
- ~ Photographs, optional.

Date 08/19/2016

Project Name South Market Village

Applicant Halvorsen Development Cooperation

Address 851 South Federal Highway, Ste. 201 Boca Raton, FL 33432

Phone 561-367-9200

Fax 561-367-9887

Email tvincent@halvorsenholdings.com

If different from above:

Property Owner: Name Publix North Carolina, LP

Address 601 Greenville Highway

TO THE CITY COUNCIL:

I, Thomas Vincent (OWNER/AGENT), hereby petition the City Council for a variance from the literal provisions of the Zoning Ordinance of the City of Hendersonville.

I request a variance from the following provisions of the ordinance (cite section numbers).

17-3-3 Prohibition Against Development Within the Stream Buffer - The existing developed condition within the 30' and 20' stream buffer are more impactful to the buffer than the proposed condition

Official Use:  
DATE RECEIVED: 8-23-2016 BY DTH

**FACTORS RELEVANT TO THE ISSUANCE OF A VARIANCE (Section 7-4-14):**

For applications undergoing special use review, City Council may authorize variances in specific cases from the dimensional and improvements standards of the zoning ordinance upon finding that a literal enforcement of such standards will result in practical difficulty or unnecessary hardship and so long as the granting of such variance or variances will not result in a use or development which would violate the findings of fact required by Section 7-4-10. Variances may not be granted with regard to uses or to intensity.

**FINDINGS OF FACT (Section 7-4-10.1)** No special use permit shall be approved by City Council unless each of the following findings is made.

The burden of establishing these findings of fact shall lie upon the applicant. In addressing the issue of compatibility, as required, the applicant must demonstrate compatibility with the particular neighborhood in which the development or use is to be located. The fact that a use is authorized as a special use within a zoning district classification shall not give rise to a presumption that such special use is compatible with other uses authorized in the zoning district classification.

**(A)** The use or development is located, designed and proposed to be operated so as to maintain or promote the public health, safety, and general welfare.

The proposed development is designed to maintain safe site access. The development is designed to promote health of surrounding environmental features by detaining and providing improved water quality. The storm water leaving the site will be cooler, have significantly less pollutants, and be released at a reduced rate compared to the undetained flow that the buffer is currently receiving.

**(B)** There are, or will be at the time they are required, adequate public facilities to serve the use or development as specified in Section 7-11.

Adequate potable water and wastewater supply are available to support the proposed use based on information produced by utility departments. based upon requirements within the TIA, improvements to the adjacent roadways will be developed to mitigate the impact of the traffic from the development

**(C)** The use or development complies with all required regulations and standards of the Zoning Ordinance or with variances thereto, if any, granted pursuant to Section 7-4-14, and with all other applicable regulations.

The proposed development complies to all regulations and standards with granted variance to ordinance 17-3-3.

**(D)** The use or development is located, designed and proposed to be operated so as to be compatible with the particular neighborhood in which it is to be located.

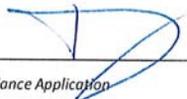
The existing uses surrounding the project site consist of grocery stores, convince/drug stores, strip centers, and a gas station. The proposed development is compatible with the existing uses. The grocery store use, surface parking, planting strip, and pedestrian access are all in concert with the surrounding neighborhood and adjacent developments

**(E)** The use or development conforms with the general plans for the physical development of the City as embodied in this Ordinance and in the 2030 Hendersonville Comprehensive Plan.

This site is located at one of Hendersonville's 8 activity nodes. The development will enhance the streetscape and walkability of the area, and add stormwater BMPs that will reduce the impacts on existing impacted streams.

Signature \_\_\_\_\_

*Special Use Variance Application*



Printed Name Thomas Vincent, Halvorsen Development

Page 2 of 2

Print Form



CITY OF HENDERSONVILLE  
DEVELOPMENT ASSISTANCE DEPARTMENT  
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TO THE CITY COUNCIL:

I, Thomas Vincent (OWNER/AGENT), hereby petition the City Council for a variance from the literal provisions of the Zoning Ordinance of the City of Hendersonville.

I request a variance from the following provisions of the ordinance (cite section numbers).

15-6 Bufferyards and 15-9(b) Landscaping for Vehicular Use Areas(Planting Strips)

Official Use:  
DATE RECEIVED: 8-23-2016 BY DTH

**FACTORS RELEVANT TO THE ISSUANCE OF A VARIANCE (Section 7-4-14):**

For applications undergoing special use review, City Council may authorize variances in specific cases from the dimensional and improvements standards of the zoning ordinance upon finding that a literal enforcement of such standards will result in practical difficulty or unnecessary hardship and so long as the granting of such variance or variances will not result in a use or development which would violate the findings of fact required by Section 7-4-10. Variances may not be granted with regard to uses or to intensity.

**FINDINGS OF FACT (Section 7-4-10.1)** No special use permit shall be approved by City Council unless each of the following findings is made.

The burden of establishing these findings of fact shall lie upon the applicant. In addressing the issue of compatibility, as required, the applicant must demonstrate compatibility with the particular neighborhood in which the development or use is to be located. The fact that a use is authorized as a special use within a zoning district classification shall not give rise to a presumption that such special use is compatible with other uses authorized in the zoning district classification.

**(A)** The use or development is located, designed and proposed to be operated so as to maintain or promote the public health, safety, and general welfare.

The proposed development is designed to maintain safe site access. The development is designed to promote health of surrounding environmental features by increasing flood storage area along property boundary and promoting safe conveyance of flood waters with granted variance to ordinance 15-6.

**(B)** There are, or will be at the time they are required, adequate public facilities to serve the use or development as specified in Section 7-11.

Adequate potable water and wastewater supply are available to support the proposed use. The adjacent public road systems have proposed improvements to help with traffic flow. Adjacent roads have adequate capacity for proposed use with proposed improvements.

**(C)** The use or development complies with all required regulations and standards of the Zoning Ordinance or with variances thereto, if any, granted pursuant to Section 7-4-14, and with all other applicable regulations.

The proposed development complies to all regulations and standards with granted variance to ordinance 15-6.

**(D)** The use or development is located, designed and proposed to be operated so as to be compatible with the particular neighborhood in which it is to be located.

The existing uses surrounding the project site consist of grocery stores, convince/drug stores, strip centers, and a gas station. The proposed development is compatible with the existing uses.

**(E)** The use or development conforms with the general plans for the physical development of the City as embodied in this Ordinance and in the 2030 Hendersonville Comprehensive Plan.

This site is located at one of Hendersonville's 8 activity nodes. The development will enhance the streetscape and walkability of the area, and add stormwater BMPs and flood storage areas along property boundary and Mud Creek that will reduce the impacts on existing impacted streams.

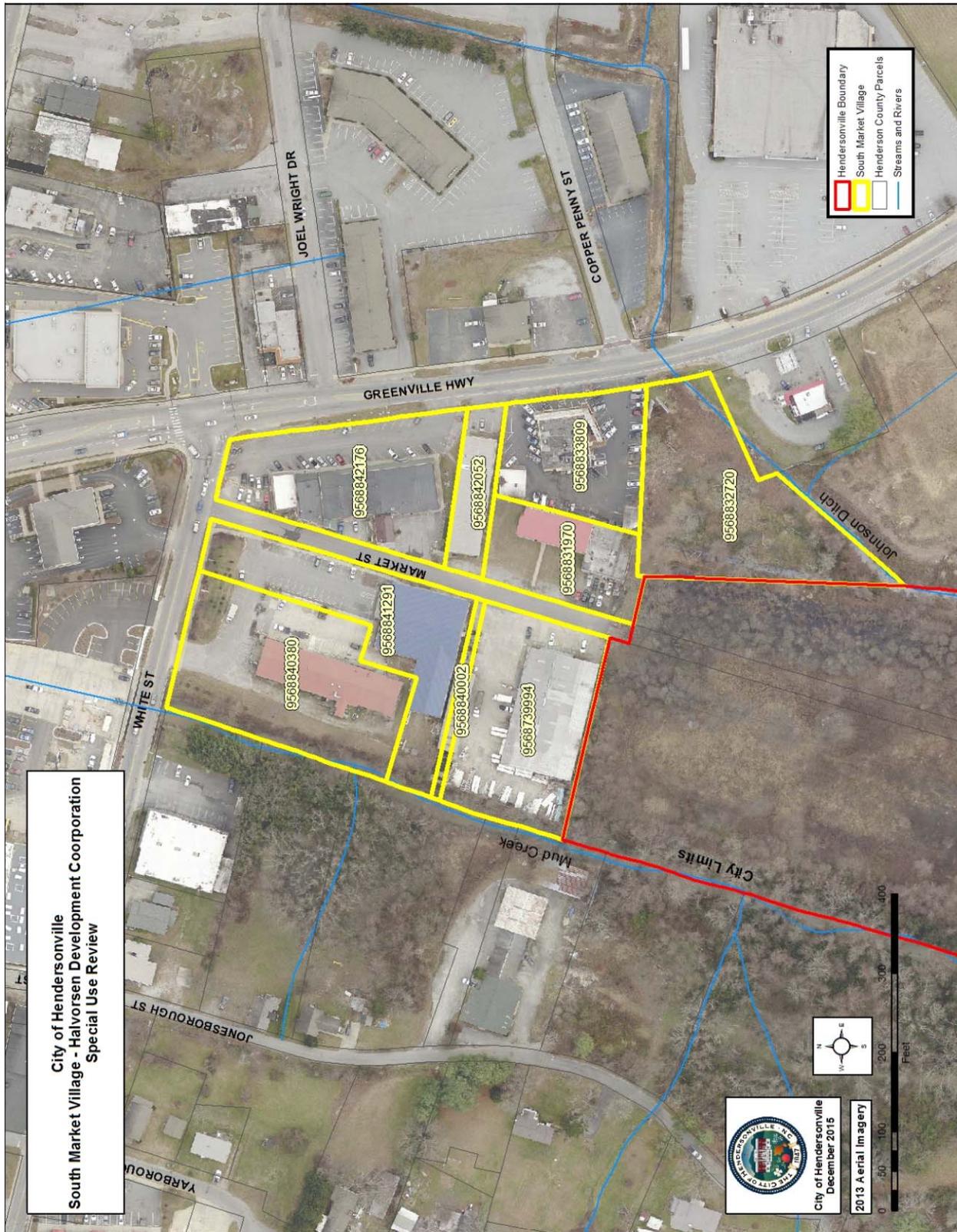
Signature \_\_\_\_\_

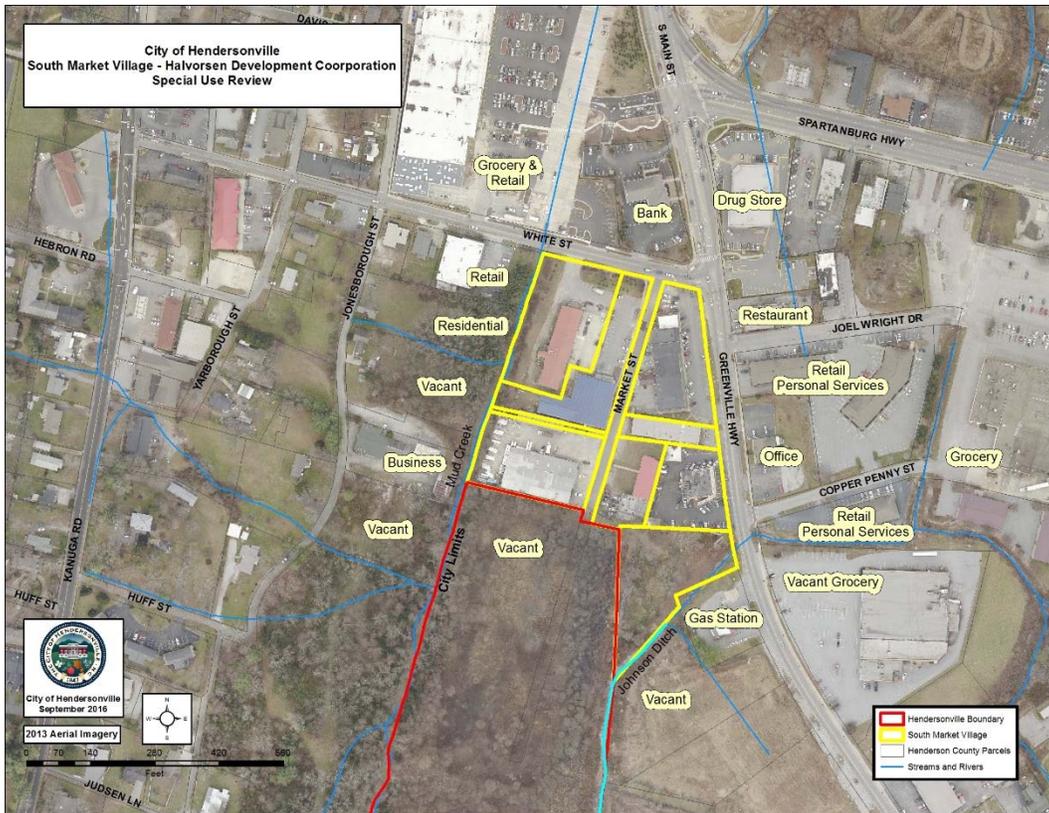
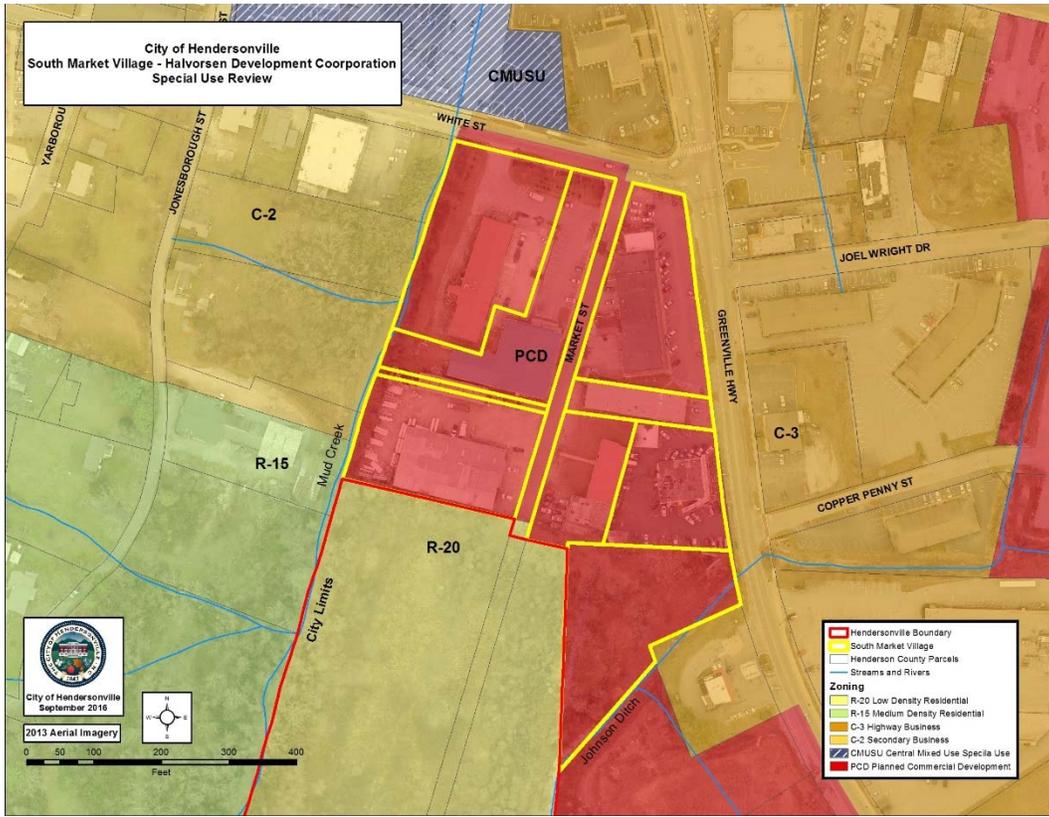
*Special Use Variance Application*

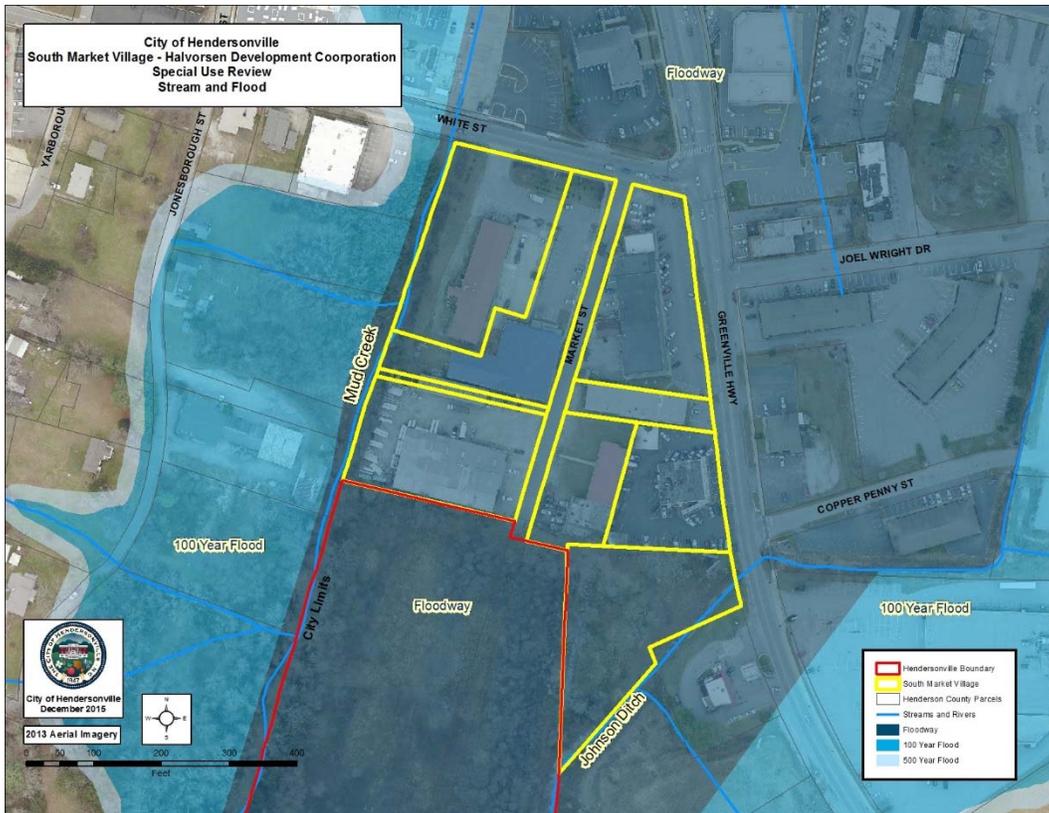
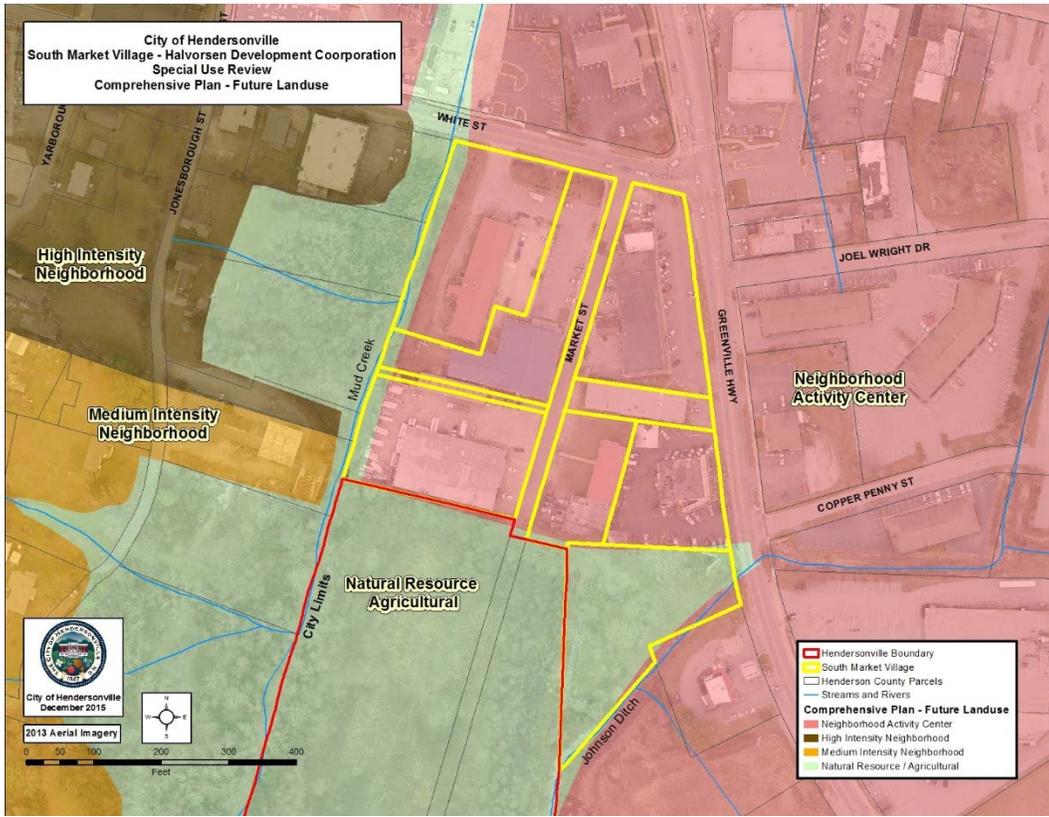
Printed Name \_\_\_\_\_

Page 2 of 2

*Thomas Vincent*



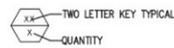






**PLANT SCHEDULE**

TREES	CODE	QTY	COMMON NAME	BOTANICAL NAME	CONTAINER	
	AR	4	Red Maple	Acer rubrum	F.G. B&B, 6" MIN. HEIGHT	
	AS	8	Sugar Maple	Acer saccharum	F.G. B&B, 6" MIN. HEIGHT	
	BR	8	River Birch	Betula nigra	F.G. B&B, 6" MIN. HEIGHT	
	CC	16	Eastern Redbud	Cercis canadensis	F.G. B&B, 6" MIN. HEIGHT	
	CF	6	Eastern Dogwood	Cornus florida	F.G. B&B, 6" MIN. HEIGHT	
	FG	16	Green Ash	Fraxinus pennsylvanica	F.G. B&B, 6" MIN. HEIGHT	
	LN	20	Natchez Crape Myrtle	Lagerstroemia fauriei 'Natchez'	F.G. B&B, 6" MIN. HEIGHT	
	PO	6	Okame Cherry	Prunus x incam 'Okame'	F.G. B&B, 6" MIN. HEIGHT	
	QP	23	Willow Oak	Quercus phellos	F.G. B&B, 6" MIN. HEIGHT	
	UA	15	Allee Lacebark Elm	Ulmus parvifolia 'Allee'	F.G. B&B, 6" MIN. HEIGHT	
SHRUBS	CODE	QTY	COMMON NAME	BOTANICAL NAME	SIZE	
	AG	148	Glossy Abelia	Abelia x grandiflora	5 GAL, 24" MIN. HEIGHT, 36" O.C.	
	AA	12	Red Chokeberry	Aronia arbutifolia	5 GAL, 24" MIN. HEIGHT, 36" O.C.	
	BC	88	Crimson Pygmy Barberry	Berberis thunbergii 'Crimson Pygmy'	5 GAL, 24" MIN. HEIGHT, 36" O.C.	
	CF2	80	Plum Yew	Cephalotaxus harringtonia	5 GAL, 24" MIN. HEIGHT, 36" O.C.	
	CA	7	Mountain Sweet Pepperbush	Clethra acuminata	5 GAL, 24" MIN. HEIGHT, 36" O.C.	
	FG2	102	Dwarf Fothergilla	Fothergilla gardenii	5 GAL, 24" MIN. HEIGHT, 36" O.C.	
	GF	181	Frostproof Gardenia	Gardenia jasminoides 'Frostproof'	3 GAL, 24" MIN. HEIGHT	
	IB	272	Dwarf Burford Holly	Ilex cornuta 'Burfordii Nana'	5 GAL, 18" MIN. HEIGHT	
	IG	89	Inkberry Holly	Ilex glabra	5 GAL, 24" MIN. HEIGHT, 36" O.C.	
	IV	15	Winterberry	Ilex verticillata	5 GAL, 24" MIN. HEIGHT, 36" O.C.	
	LR	101	Sizzling Pink Fringe Flower	Loropetalum chinense 'Sizzling Pink'	7 GAL, 24" MIN. HEIGHT, 36" O.C.	
	RC	72	Piedmont Azalea	Rhododendron canescens	5 GAL, 24" MIN. HEIGHT, 36" O.C.	
	SL	8	Meadow-Sweet	Spiraea latifolia	5 GAL, 24" MIN. HEIGHT, 36" O.C.	
	VR	52	Leatherleaf Viburnum	Viburnum rhytidophyllum	7 GAL, 30" MIN HEIGHT	
	VT	90	Arrowwood	Viburnum tinus	5 GAL, 24" MIN. HEIGHT, 36" O.C.	
GROUND COVERS	CODE	QTY	COMMON NAME	BOTANICAL NAME	SIZE	SPACING
	CD		Bermuda Sod	Cynodon dactylon	SOD	
	HS	290	Stella de Oro Daylily	Hemerocallis x 'Stella de Oro'	1 GAL.	24" o.c.
	LS	26	Big Blue Lilyturf	Liriope muscari 'Big Blue'	1 GAL.	18" o.c.



NOTE TO CONTRACTOR: IF GRAPHIC REPRESENTATION OF PLANTINGS ON PLANS DOES NOT MATCH QUANTITIES IN PLANT LIST, GRAPHIC REPRESENTATION OF PLANTINGS ON PLANS WILL GOVERN.

**LANDSCAPE REQUIREMENTS**

**BUFFER REQUIREMENTS**

A TYPE-B LANDSCAPE BUFFER IS REQUIRED TO BE PROVIDED ON THE WEST & SOUTH SIDES OF THE 20' DISTURBANCE ALLOWED STREAM BUFFER. ADDITIONAL PLANTINGS ARE LOCATED ELSEWHERE ON SITE IN LIEU OF FULLY COMPLIANT BUFFERS.

**TYPE-B BUFFER REQUIREMENTS:**

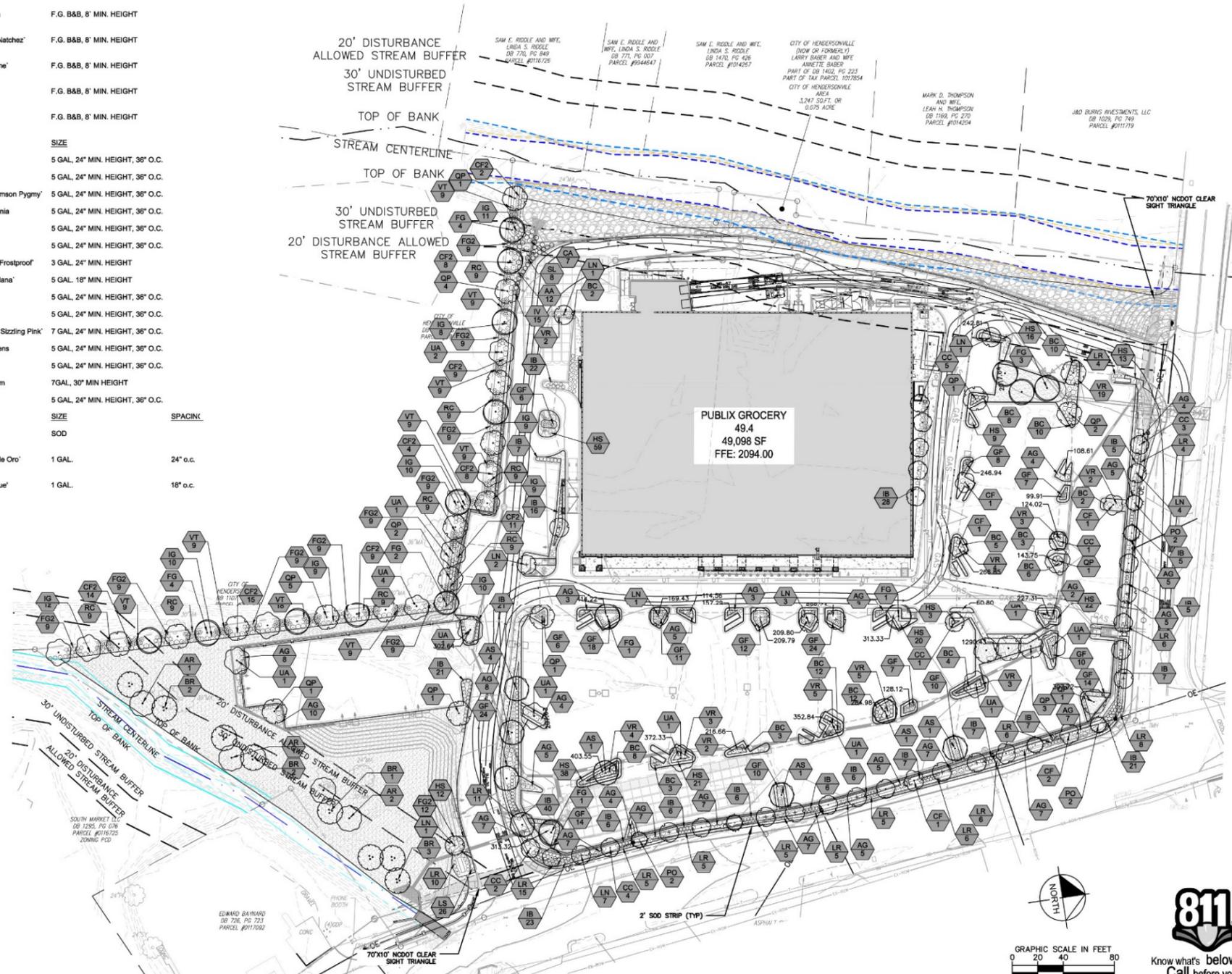
- 4 TREES, 25 EVERGREEN SHRUBS, AND 33 DECIDUOUS SHRUBS PER 100' LINEAR FRONTAGE REQUIRING TYPE-B BUFFER: 807
- 33 LARGE MATURING TREES, 203 EVERGREEN SHRUBS, 267 FLOWERING SHRUBS PROVIDED: 29 LARGE MATURING TREES, 222 EVERGREEN SHRUBS & 316 FLOWERING SHRUBS

**STREET TREE REQUIREMENTS**

- IN AN ENTRY CORRIDOR OVERLAY DISTRICT STREET TREES ARE REQUIRED AT A RATE OF ONE UNDERSTORY TREE PER 40 LINEAR FEET (DUE TO OVERHEAD POWER LINE CONFLICT)
- 927 LINEAR FEET OF PUBLIC R.O.W. FRONTAGE, 23 TREES REQUIRED
- 27 UNDERSTORY STREET TREES PROVIDED

**VEHICULAR USE AREA TREE REQUIREMENT**

- 1 TREE AND 2 SHRUBS ARE REQUIRED FOR EVERY 4,000 SF OF VEHICULAR USE AREA.
- 169,448 SF OF VEHICULAR USE AREA, 43 TREES & 85 SHRUBS REQUIRED
- 50+ TREES AND 100+ SHRUBS PROVIDED
- 50% OF REQUIRED VULVA CANOPY TREES AND SHRUBS MUST BE LOCATED IN PARKING LOT ISLANDS OR MEDIANS
- 22 TREES REQUIRED / 22 PROVIDED
- 43 SHRUBS REQUIRED / 130 PROVIDED



September 01, 2016 - 7:11pm By: Laura.Novak@kimley-horn.com

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 SUITE 200  
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NO. 1748  
 NORTH CAROLINA  
 PROFESSIONAL ENGINEER  
 WALTER A. TIDD

NO.	DATE	BY	REV. SET	REVISIONS

CLIENT:  
**HALVORSEN DEVELOPMENT CORPORATION**  
 851 SOUTH FEDERAL HIGHWAY  
 SUITE 201  
 BOCA RATON, FLORIDA 33432

PROJECT:  
**SOUTH MARKET VILLAGE**  
 GREENVILLE HIGHWAY  
 HENDERSONVILLE  
 HENDERSON COUNTY  
 NORTH CAROLINA

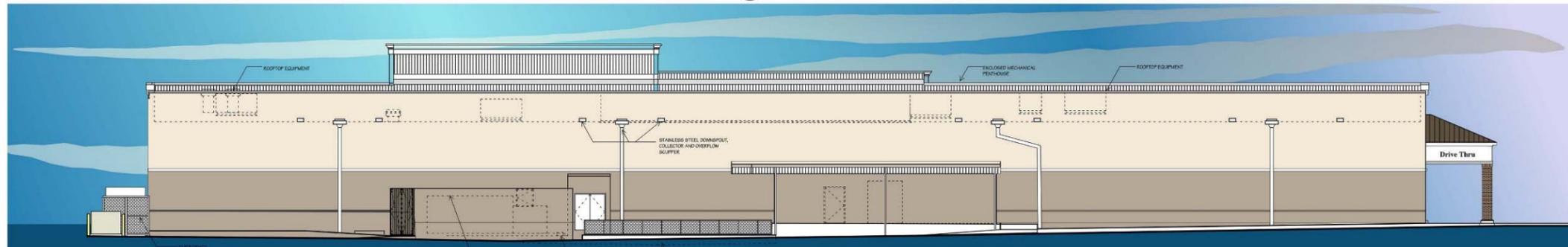
TITLE:  
**LANDSCAPE PLAN**

DESIGNED BY: TEB  
 DRAWN BY: DMH  
 CHECKED BY: ECH  
 DATE: 01-25-2016  
 PROJECT#: 018667009  
**C5-0**

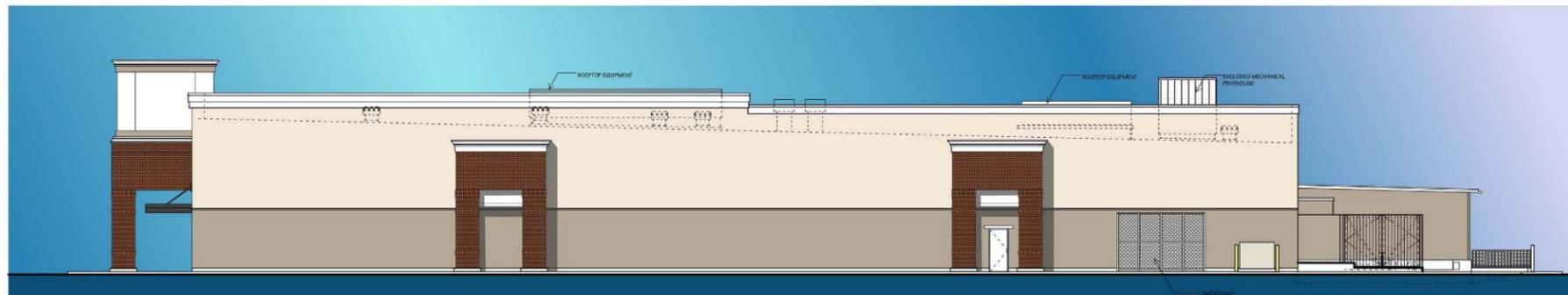
THIS DOCUMENT, TOGETHER WITH THE CONCEPTS AND DESIGNS PRESENTED HEREIN, AS AN INSTRUMENT OF SERVICE, IS INTENDED ONLY FOR THE SPECIFIC PURPOSE AND CLIENT FOR WHICH IT WAS PREPARED. REUSE OF AND IMPROPER RELIANCE ON THIS DOCUMENT WITHOUT WRITTEN AUTHORIZATION AND ADAPTATION BY KIMLEY-HORN AND ASSOCIATES, INC. SHALL BE WITHOUT LIABILITY TO KIMLEY-HORN AND ASSOCIATES, INC.



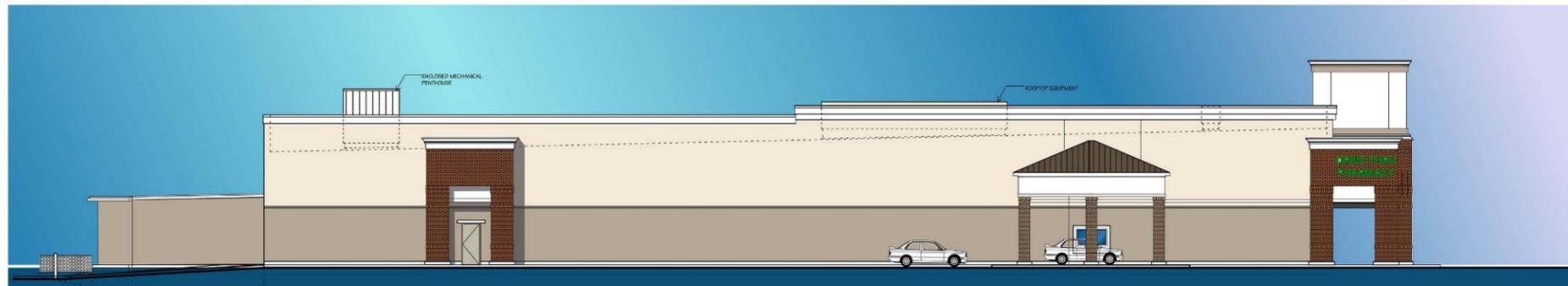
○ FRONT ELEVATION (EAST) 3/16" = 1' - 0"



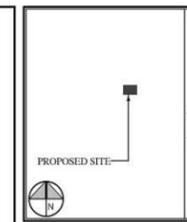
○ REAR ELEVATION (WEST) 3/16" = 1' - 0"



○ RIGHT SIDE ELEVATION (NORTH) 3/16" = 1' - 0"



○ LEFT SIDE ELEVATION (SOUTH) 3/16" = 1' - 0"



MARK	DESCRIPTION	DATE
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**SOUTH MARKET VILLAGE**  
 HENDERSONVILLE, NORTH CAROLINA

JOB NUMBER	14021
SCALE	AS NOTED
ISSUE DATE	
PERMIT DATE	
BID DATE	

DRAWN BY	MW
CHECKED BY	MW
DISCIPLINE	ARCHITECTURE
PLAN TYPE	
SHEET NUMBER	AC3.01

14031 - COLOR EL 01 - 15.10.15  
 PLOT : 15.10.15



## **APPEAL OF DEVELOPMENT DECISIONS**

Section 7-13 of the Zoning Ordinance outlines the process for appeal of development decisions by City Council. The following Sections of the Zoning Ordinance apply specifically to Special Use Review:

**Section 7-13-2 (b): Preliminary site plans.** Decisions of the City Council regarding appeals from development decisions concerning applications for preliminary site plan approval may be appealed to the Superior Court by any aggrieved party. Such appeals shall be in the nature of certiorari and must be filed within 30 days after the filing of the decision in the office of the City Clerk or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the Clerk at the time of the hearing, whichever is later. The copy of the decision of the Council may be delivered to aggrieved parties either by personal service for by registered mail or certified mail return receipt requested.

**Section 7-13-2 (d): Special use review.** Judicial review of decisions regarding applications processed under the provisions of special use review, established in Section 7-4, above, require special treatment due to the fact that they involve two separate applications which, though processed simultaneously, require Council to make two separate decisions exercising two different types of decision-making authority. One application requests enactment of an ordinance amending the Official Zoning Map, and the other requests issuance of a special use permit. The first application involves a legislative decision on the part of Council, and the second a quasi-judicial decision. The quasi-judicial decision, that is, the one concerning the application for a special use permit, may be appealed to the Superior Court by any aggrieved party in the manner prescribed in paragraph b), above. Such appeal shall be in the nature of certiorari. The legislative decision, which is the one concerning the request for rezoning, may be contested, in accordance with NCGS Section 160A-364.1, by a cause of action commenced within two months of the date of the decision.

The validity of the ordinance may be challenged in accordance with North Carolina General Statute Section 160A-364.1.

### **§ 160A-364.1. Statute of limitations.**

A cause of action as to the validity of any zoning ordinance, or amendment thereto, adopted under this Article or other applicable law shall accrue upon adoption of the ordinance, or amendment thereto, and shall be brought within two months as provided in G.S. 1-54.1. (1981, c. 891, s. 3; 1995 (Reg. Sess., 1996), c. 746, s. 7.)