

July 6, 2017
REGULAR MEETING OF THE CITY COUNCIL
COUNCIL CHAMBERS – CITY HALL
5:45 p.m.

Present: Mayor Barbara G. Volk, Mayor Pro Tem Steve Caraker and Council Members: Jeff Miller, Jerry Smith, and Ron Stephens

Staff Present: City Manager John F. Connet, City Attorney Sam Fritschner, City Clerk Tammie Drake, Senior Planner Matt Champion, Engineering Director Brent Detwiler, Development Assistance Director Susan Frady, Human Resources Director Jennifer Harrell, Intern Kaitlyn Sines, Planner Daniel Heyman, Fire Chief Joseph Vindigni, Pam Ludwig, Budget Analyst Adam Murr, Public Works Director Tom Wooten

1. Call to Order: Mayor Volk called the regular meeting to order at 5:45 p.m. and welcomed those in attendance. A quorum was established with five members in attendance.

2. Invocation and Pledge of Allegiance: A moment of silence for prayer was followed by the Pledge of Allegiance to the Flag led by Aiden and Zach Powers, grandsons of Mayor Barbara Volk.

3. Public Comment Time: *Up to 15 minutes is reserved for comments from the public for items not listed on the agenda.*

Tom Orr, Chair of the Walk of Fame Steering Committee, presented the 2017 Report of the Walk of Fame. He asked Council to review the report and present any questions. Mayor Volk expressed her appreciation for the work of the Committee and all they have accomplished.

J.W. Davis addressed the Council and announced Eblen Charities is coming to Hendersonville and will locate in the Four Seasons shopping center. He requested a \$1,000 special appropriation to Eblen Charities.

Tom Hill, Zirconia, regarding the Findings of Fact and Conclusions of Law for the Hendersonville High School project, made a presentation to the Council about an unsafe condition posed by the new proposed parking lot. He presented photos of the area.

Barbara Hughes, 315 North Main Street, lives in best City the world! She invited the Council's and public's participation to the 21st Chalk it Up event July 15.

Ken Fitch, 1046 Patton Street, regarding the Findings of Fact and Conclusions of Law for the Hendersonville High School project, provided photos and a video of existing conditions of students crossing Highway 25 and traffic and expressed safety concerns.

Heather Boeke, Executive Director of Hands On!, expressed appreciation for the Council's support of the Mud Run. Hands On! is growing and expect to grow their traveling program by 70 percent. They are celebrating their tenth anniversary.

4. Consideration of Agenda:

Addition:

14a. Consideration of an Ordinance Respecting Hours of Certain Sunday Alcohol Sales

Council Member Smith asked to discuss a contribution to Eblen Charities. **He moved City Council's approval of the addition of the special appropriation to Eblen Charities. A unanimous vote of the Council followed. Motion carried. This was added to the agenda as item 15a.**

Mayor Pro Tem Caraker moved approval of the agenda as amended. A unanimous vote of the Council followed. Motion carried.

5. Consideration of Consent Agenda: *Consent agenda items are considered routine, non-controversial in nature and are considered and disposed of through a singular motion and vote.*

A. Consideration of Minutes:

May 5, 2017 Special Meeting
June 2, 2017 Regular Meeting

B. Consideration of Budget Amendments: Ms. Brian Pahle, Assistant to the City Manager, presented the following:

1. Downtown Grant Award, Fund 20. Increase of \$100,000
2. Multi-year Grant Closeouts:

Fund 343, Decrease of \$13,058.32

Fund 346, Decrease of \$3,464.52

Fund 390, Decrease of \$85,424.67

3. Streambank Restoration Project, Fund 379, Increase of \$62,484

C. Consideration of Awarding a Contract for the Construction of the Water Treatment Plant High Service Pump Replacement Project:

Engineering Director Brent Detwiler reported formal bids were received for the Water Treatment Plant High Service Pump Replacement project. He reviewed the details of the construction project. He reported three bids were received with the following results:

Wharton-Smith - \$1,809,000.00

Dellinger, Inc. - \$1,941,800.00

State Utility - \$2,023,000.00

Consulting engineers, McKim & Creed, reviewed each bid for completeness and accuracy. As a result of this review, City staff recommended the award of the project to Wharton-Smith of Charlotte, NC, the lowest responsive and responsible bidder, in the amount of \$1,809,000.00.

D. Consideration of Special Event Permits:

- i. 60th Anniversary Museum Exhibit Dedication:** Development Assistance Director Susan Frady reported the Special Events Committee voted unanimously to recommend the City Council approve the special event for August 26, 2017 from 1:00 to 3:00 p.m. The Rescue Squad will have a display in the Henderson County Heritage Museum to celebrate 60 years of service. The spaces in front of the courthouse will be closed from 8:00 a.m. - 5:00 p.m. for the display of apparatus. The first four spaces on each side of the courthouse will be closed and used for emergency vehicles.
- ii. Commemoration of the 50th Anniversary of the Crash of Piedmont Airlines Flight 22:** Development Assistance Director Susan Frady reported the Special Events Committee voted unanimously to recommend the City Council approve the special event for July 19 from 11:30 a.m. to 12:30 p.m. The event is to honor those who responded to the crash and assisted with recovery efforts, and, to note the improvements in airline safety that resulted from the crash. The spaces in front of the courthouse will be closed from 10 a.m. - 12:30 p.m.
- iii. Fiesta:** Development Assistance Director Susan Frady reported the Special Events Committee voted unanimously to recommend the City Council approve the special event on September 24 from 12:00 p.m. to 6:00 p.m. at the Henderson County Tourism Development Authority parking lot and on Main Street between Allen Street and Barnwell Street. The change this year is that Main Street will be closed from Allen Street to Caswell Street adding an additional block to the festival.

E. Consideration of Awarding the Contract for the 2017 Resurfacing Project: Mr. Wooten reported the Public Works Department obtained formal bids for the 2017 Resurfacing Project. Bids were opened on June 27 with the following results:

Rogers Group - \$488,970.55

Southeastern Asphalt - \$514,715.00

Tarheel Paving - \$356,734.53

Mr. Wooten reported the low bid of Tarheel Paving bid was reviewed for accuracy and completeness. As a result of this review, City staff recommends the award of the project to Tarheel Paving. He explained staff will add additional work to the project in order to use a majority, if not all, of the budgeted funds for resurfacing.

F. Consideration of Assistant City Manager Job Description and Pay Grade: City Manager John Connet requested the establishment of an Assistant City Manager position in the Pay and Classification Plan. He provided a job description and recommended placing the position in pay grade 31. [A copy of the job description and pay and classification plan is available in the office of the Human Resources Director.]

G. Consideration of Amendments to the Personnel Policy: Human Resources Director Jennifer Harrell provided proposed amendments to the Personnel Policy. She explained specific language addressing the promotion of employees was inadvertently left out of the recommended Personnel Policy, which was adopted by Council in June 2017. The language is needed to ensure that employees who are promoted or reclassified and receive a 5% increase that does not reach the probation completion amount, are then moved to that amount after the successful completion of their probationary period. Currently, the language only provides those employees promoted or reclassified to the minimum of the salary range be moved to the probation completion amount upon successful completion of the probationary period. An employee who receives a 5% increase as a result of a promotion or reclassification but does not reach the probation completion amount with that change is in effect penalized. This revision will clean up the language and deter any possible inequities that could result under the current language. The revisions are found in Article III, Section 8.

Ms. Harrell stated there was an error in a reference to accumulated vacation leave. In Article VII, section 10, the current language references the vacation leave as shown in section 16. It states "30" days. The actual vacation accrual noted in section 16 is "40" days.

H. Consideration of Amendments to the Pay and Classification Schedule: Human Resources Director Jennifer Harrell presented minor revisions that were intended but not included in the Pay and Classification Study, and include:

- 1) Move the "Customer Services Support Specialist" grade 11, to "Senior Customer Support Specialist" grade 13
- 2) Move the "Instruments & Electronics Technician" grade 13. to "Instrumentation & Electrical Technician", grade 14
- 3) Move the "Police Communications Supervisor" grade 11, to grade 13
- 4) Move the "Parking Services Supervisor" grade 11, to grade 13
- 5) Move the "Development Assistance Director" grade 25, to grade 28
- 6) Add the "Assistant City Manager", grade 31

[The proposed pay and classification scale is available in the office of the Human Resources Director.]

I. Consideration of an Amendment to the Environmental Sustainability Board By-Laws: City Attorney Fritschner presented an amendment to the By-Laws of the Environmental Sustainability Board that would allow the Chair of that Board to be chosen/elected by the ESB membership instead of being appointed by the City Council.

J. Consideration of a Resolution Ratifying the Mayor Pro Tem's Execution of Loan Documents Related to the Purchase of a City Fire Truck:

RESOLUTION # 17-0744

A RESOLUTION RATIFYING THE MAYOR PRO TEM'S EXECUTION OF LOAN DOCUMENTS RELATED TO THE PURCHASE OF A CITY FIRE TRUCK

WHEREAS the City Council did on 1 June 2017 adopt a resolution approving a financing arrangement with Entegra Bank related to the purchase of a fire truck VIN 4P1BAAFFXHA017778, and

WHEREAS the said resolution did not explicitly authorize the Mayor to execute documents effecting and related to the said financing arrangement, and

WHEREAS it is recognized that the Mayor is impliedly authorized to execute documents reasonably necessary to effect transactions explicitly approved by the City Council, and

WHEREAS it became necessary and convenient for the City to complete execution of the financing documents not later than the end of the 2016-2017 fiscal year, viz., 30 June 2017, of the documents, and

WHEREAS the Mayor was absent from the City during the final days of June 2017, and

WHEREAS in the Mayor's absence the Mayor Pro Tem is authorized to do all those things the Mayor is otherwise authorized to do in that capacity, and

WHEREAS by understanding with Entegra Bank, the Mayor Pro Tem executed the said financing documents by implicit authorization under the 1 June 2017 resolution,

NOW, BE IT THEREFORE RESOLVED that the City Council does hereby ratify without exception or reservation the Mayor Pro Tem's 30 June 2017 execution of documents effecting and relating to a loan with respect to a fire truck VIN 4P1BAAFFXHA017778.

Adopted this 6th day of July 2017.

/s/Barbara G. Volk, Mayor

Attest: /s/Tammie K. Drake, City Clerk

K. Consideration of a Resolution Accepting the Loan Offer from the NC Division of Water Infrastructure, NCDEQ, and Making the Applicable Assurances Contained Therein for Project No. CS370444-10, Multi-area Streambank Restoration Project: Engineering Director Brent Detwiler explained City staff pursued funding through the North Carolina Department of Environmental Quality (NCDEQ) Clean Water State Revolving Fund for a Multi-area Streambank Restoration project (Project #CS370444-10) in 2016 and were later informed the project application was accepted. During subsequent discussions, City Council decided to move forward with design of the project, and staff has been working with its consultant to complete the project design according to NCDEQ's time line.

Mr. Detwiler presented the 0% interest loan offer letter from NCDEQ. He presented a resolution to accept the loan offer as required by NCDEQ.

Resolution #17-0745

RESOLUTION BY GOVERNING BODY OF APPLICANT

WHEREAS, the North Carolina Clean Water Revolving Loan and Grant Act of 1987 has authorized the making of loans and grants to aid eligible units of government in financing the cost of construction of wastewater treatment works, wastewater collection systems, and water supply systems, water conservation projects, and

WHEREAS, the North Carolina Department of Environmental Quality has offered a State Revolving Loan in the amount of \$2,982,484.00 for the construction of the Multi-area Streambank Restoration Project, and

WHEREAS, the City of Hendersonville intends to construct said project in accordance with the approved plans and specifications,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HENDERSONVILLE:

That City of Hendersonville does hereby accept the State Revolving Loan offer of \$2,982,484.00.

That the City of Hendersonville does hereby give assurance to the North Carolina Department of Environmental Quality that all items specified in the loan offer, Section II - Assurances will be adhered to.

That John Connet, City Manager, and successors so titled, is hereby authorized and directed to furnish such information as the appropriate State agency may request in connection with such application or the project; to make the assurances as contained above; and to execute such other documents as may be required in connection with the application.

That City of Hendersonville has substantially complied or will substantially comply with all Federal, State and local laws, rules, regulations, and ordinances applicable to the project and to Federal and State grants and loans pertaining thereto.

Adopted this the sixth day of July 2017 at Hendersonville, North Carolina.

/s/Barbara G. Volk, Mayor

Attest: /s/Tammie K. Drake, City Clerk

L. Consideration of Flight 22 Memorial Resolution:

Resolution #17-0746

RESOLUTION COMMEMORATING FATEFUL FLIGHT 22

- Whereas, July 19, 2017 marks the 50th Anniversary of one of the most disastrous days in North Carolina aviation history; and
- Whereas, At 12:01 PM on July 19, 1967, a mid-air collision occurred over the skies of Hendersonville as Piedmont Flight 22, a Boeing 727 carrying 79 men, women and children, enroute from the Asheville-Hendersonville Airport to Roanoke, Virginia, collided with a private Cessna 310B carrying one crew member and two passengers, tragically resulting in the loss of 82 lives; and
- Whereas, The explosion rocked houses and rattled windows, and the wreckage plummeted to earth, landing in the Camp Pinewood; and
- Whereas, Countless local unsung heroes -- our local law enforcement officers, paramedics, doctors, nurses and countless volunteer firefighters and others from throughout our region, risked their own personal safety and served days upon days to provide whatever assistance they could; and
- Whereas, Remembrances continue to linger in the minds of family members, friends, residents, those who witnessed, and those who assisted with the tragic event here that day; and
- Whereas, Through the efforts of Paul D. Houle, the Western North Carolina Air Museum, Mountain 1st Bank and Trust, the City of Hendersonville and others, a permanent monument was set on the grounds of Mountain 1st Bank and Trust bank on Orr's Camp Road in Hendersonville near the accident location, in remembrance of those lives lost on that day of tragedy; and
- Now, Therefore, I, Barbara G. Volk, Mayor of the City of Hendersonville, do hereby proclaim Wednesday, July 19, 2017 as

"Flight 22 Day of Remembrance"

and urge citizens of the City, Henderson County, and all other municipalities therein, in honor and remembrance of those lives lost, to fly all American flags at half-staff beginning on Tuesday, July 18 and continuing through sunset, Thursday, July 20.

And, further, express our deep appreciation to every person who assisted in the aftermath of this disastrous event.

In Witness Whereof, I have hereunto set my hand and the Seal of the City of Hendersonville, this sixth day of July, in the year of our Lord, 2017.

/s/Barbara G. Volk, Mayor

Attest: /s/Tammie K. Drake, City Clerk

M. Consideration of a Contract with Black and Veatch International Company for Engineering Services for the French Broad River Intake and the Mills River Intake Relocation:

Utilities Director Lee Smith explained in an effort to provide the most reliable water service possible to its customers, and with the intention of being a more regional water provider, the Water and Sewer Department intends to secure a more dependable source for its water system. The French Broad River which has an annual average daily flow of 863 cubic feet per second (cfs) is less drought sensitive than the Mills River, annual average daily flow of 169 cfs.

Mr. Lee Smith reported City Staff issued a RFQ, dated January 17, 2017, for engineering services to design and permit a new raw water intake at a location along the French Broad River owned by the City of Hendersonville, and provide engineering services for the relocation of the existing Mills River intake to a point upstream of Boylston Highway Bridge.

Staff received qualification statements from four qualified engineering firms. After careful consideration, staff proposes to execute a contract with Black and Veatch International Company of Charlotte, NC to provide professional services for the projects. The proposed contract will be executed in two phases. Phase 1 will consist of preliminary investigations, field surveys, preliminary engineering, preparation of a Basis of Design, and application for DWSRF funding. Phase 2 will consist of the implementation of the solutions identified in Phase 1, including development of design and construction documents, permitting services, bidding and award, construction administration, start up, and project close out.

The budget of \$436,500 covers compensation for professional services provided in Phase 1 only. Compensation for Phase 2 will be determined after Phase 1 is complete and the project is more defined. [Exhibit A to the Professional Services Agreement is available in the office of the Utilities Director.]

N. Consideration of an Amendment to the Existing Contract with McKim & Creed, Inc. for Professional Services Associated with Phase 2 of the Northside Water System Improvements Project and Associated Budget Amendment:

Mr. Lee Smith reported on September 29, 2015, staff received qualification statements from five engineering firms to provide engineering services to address deficiencies in the northern portion of the water system (Fletcher area). Staff executed a contract with McKim & Creed, Inc. of Charlotte, NC to provide professional services to resolve the water pressure issues and evaluate capacity as it pertains to anticipated growth in the region. The proposed contract was intended to be executed in two phases.

Phase 1 (preliminary design) of the Northside Water System Improvements Project (Fletcher Area) has been completed. Staff seeks to amend the existing contract with McKim & Creed, approved by Council 1/7/2016, to proceed with phase 2 of the project. Phase 2 consists of the development of design and construction documents, permitting services, bidding and award, construction administration, start up, and project close out. [Amendment No. 1 to the Northside Water System Improvements Professional Services Contract is available in the office of the Utilities Director.]

Budget Amendment:

Fund 401, \$257,908 for Phase 2 engineering costs for the Northside Water System improvements.

Mayor Pro Tem Caraker moved approval of the items listed on the consent agenda. A unanimous vote of the Council followed. Motion carried.

6. Consideration of the Findings of Fact, Conclusions of Law and Decision for the Hendersonville High School Special Use Permit:

City Attorney Sam Fritschner advised it would be a denial of the due process rights to the applicants to consider anything that has been said since the closing of the hearing, referring specifically to any letters they have received or comments made at this meeting, as part of the decision.

Council Member Smith asked if the hearing could be reopened. City Attorney Fritschner stated yes it is a possibility until the act is accomplished. He stated Council has already voted and is only voting on the Findings.

Council Member Smith presented a dissent on the Findings of Fact and Conclusions of Law on his and Council Member Stephens' position. He asked this be recorded in the minutes. Council Member Stephens stated he agreed fully. There was no objection from the Council to include the dissent in the minutes of the meeting.

**Findings of Fact, Conclusions of Law –
Hendersonville City Council Hearings 5-4/5-17**

DISSENT

STATE OF NORTH CAROLINA
HENDERSON COUNTY

BEFORE THE
HENDERSONVILLE CITY COUNCIL
FILE NO. P17-06-SUR

IN RE THE APPLICATION OF
HENDERSON COUNTY,
HUNTING CREEK ASSOCIATES LLC
and THE HENDERSON COUNTY BOARD
of PUBLIC EDUCATION,
for a SPECIAL USE PERMIT FOR
PINs 9569-70-0527,
9569-60-4631 and 9569-60-9162

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND DECISION - DISSENT

This matter came for a hearing before the Hendersonville City Council at its regular monthly meeting on 4 April 2017 on the application of Henderson County, Hunting Creek Associates LLC and the Henderson County Board of Public Education for a special use permit with respect to PINs 9569-70-0527, 0569-60-4631, and 9569-60-9162 to build a new building for the Hendersonville High School in accordance with the terms of the application. The properties are owned by the applicants respectively and are situated on either side of Ninth Avenue between North Church Street and Oakland Street, and at 1008 Fleming Street (the Hunting Creek property) in Hendersonville.

At the hearing a number of persons testified on various aspects of the proposed projects. No person was denied the right to speak who claimed to have relevant testimony to offer. After every witness spoke, opportunity was granted for cross examination. No one was denied the right to examine any documents presented for consideration.

Following the hearing and a motion, the City Council voted 3-2 in favor of granting the application. Because N.C.G.S. § 160A-75 requires a second vote on a subsequent day for ordinances not receiving a favorable first vote of at least two thirds of the City Council, the matter was brought before the City Council again at a special session on 5 May 2017. The following findings and conclusions are adopted as a result of the testimony presented at both the May 4th and 5th hearings, in addition to other matters contained in the record.

ISSUES

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.
- (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.
- (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.
- (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.
- (E) The use or development conforms to the general plans for the physical development of the City as embodied in this chapter and in the Land Development Plan (LDP) and the Thoroughfare Plan.
- (F) 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, above. Variances may not be granted with regard to uses or to intensity.

The burden of establishing these findings of fact shall lie upon the applicant. There exists a legal presumption that a use is compatible with the neighborhood where the use is a permitted use under the existing zoning ordinance(s). HOWEVER, where the applicants' use is permitted but its project is beyond the scope of what the existing zoning ordinance allows, the burden shifts back to the applicant to establish why a "special use" should be permitted.

The application did not contain a request for any variance.

TESTIMONY

The testimony is reflected in the minutes of the June 5 and July 6, 2017 regular meetings of the City Council, which minutes are incorporated herein by reference. The complete testimony of all parties and witnesses can be found in the audio files maintained by the City of Hendersonville Clerk.

FINDINGS OF FACT

1. The properties were rezoned PID planned institutional district immediately before the hearing by a 3-2 vote of the City Council.
2. The properties contain the current Hendersonville High School Main Building (the historic "Stillwell Building"), a football and soccer field, track and bleachers, accessory buildings for educational use, several parking lots and a building formerly serving as a car dealership.
3. No variance was sought in the application.
4. A neighborhood compatibility meeting concerning the application was held on March 2, 2017 as is was incorporated as part of the record of the hearing on May 4. Notice was provided by U.S. mail to the owners of record of all property situated within 400 feet of the subject property as required by Section 7-4-4.1 of the Zoning Ordinance. Fifty-nine persons attended the meeting. Twenty persons spoke at the meeting. Thirteen expressed concerns or opposition to the project based on the threat to the health, safety and welfare of nearby residents as well as students.
5. The Council assumes that the building and layout will proceed in accordance with the submitted plans, which plans are incorporated into these findings. There is no contractual obligation to follow any specific plans at this point.
6. At the hearings on May 4th and 5th the majority of the testimony, aside from the applicant, stated that the project, including the closing of Ninth Avenue, the setback of the building from the Asheville Highway and Church Street, and the addition of a new parking lot, and other features shown in the plans and testified to in the hearing, did not adequately provide for the safety of the high school students and families and other members of the public.
7. Nearby medical businesses testified at length that the proposed new parking area would have a detrimental impact on patients getting to and from their offices as well as Pardee hospital during the peak traffic periods around the proposed New HHS and the new parking lot off Fleming Street.
8. The applicants submitted a traffic impact analysis (TIA) for this project on February 21, 2017. The TIA stated that the New HHS is expected to generate 269 trips and 91 vehicles during the am and pm peak hours respectively. These numbers do not correctly represent the driving patterns of the estimated 800+ students who will be attending the New HHS, the vast majority of whom will not ride buses to school.
9. The New HHS will have an adverse impact on the surrounding roadway network in the following ways:
 - a. Ninth Avenue will be closed stopping two locations of ingress and egress from the campus that currently exist.
 - b. The proposed traffic light at the intersection of Oakland Street and 9th Avenue will lead to greater queuing of cars during the peak periods affecting traffic at Hendersonville Middle School, Hendersonville Elementary School, Pardee Hospital and Highway 25.
 - c. The increased number of students seeking to reach the New HHS via Highway 25 will lead to additional dangerous attempts to cross the five-lane Highway 25 during peak traffic periods.
 - d. The traffic modifications proposed by the applicants along Oakland Street will not adequately address the increased traffic along Fleming at the new parking lot as well as on Highway 25 at the front of the school.

e. The applicant's proposed serpentine pattern weaving through the on-site parking area for internal storage for pick-up and drop-offs will not adequately address traffic backup concerns on Oakland and Ninth during peak am and pm periods.

10. The applicants have submitted no plan for dealing with additional parking created by activity at the Stillwell building. Despite repeated requests at the May 4th and May 5th hearings, the applicants refused to commit that the Stillwell building would be used as part of HHS or for public school purposes.

CONCLUSIONS OF LAW

1. The proposed New HHS project is NOT located, designed, and proposed to be operated so as to maintain or promote the public health, safety, and general welfare of the residents of Hendersonville or the students at HHS.

2. The proposed New HHS project, with adjoining parking lot on Fleming Street, is NOT located, designed, and proposed to be operated so as to be compatible with the particular neighborhood in which it is to be located.

3. The proposed New HHS project does NOT conform to the general plans for the physical development of the City as embodied in the Land Development Plan, the Thoroughfare Plan and City Ordinance 7-4-10.1 listed above.

DECISION

For the above reasons, City Council members Jerry Smith and Ron Stephens voted to deny the applicants request for the special use permit.

This Dissent entered into the record at the regularly scheduled Council meeting of July 6, 2017.

Mayor Pro Tem Caraker moved the City Council adopt the proposed findings of fact, conclusions of law and decision. The vote was three in favor; two opposed (Smith, Stephens). Motion carried.

STATE OF NORTH CAROLINA
HENDERSON COUNTY

BEFORE THE
HENDERSONVILLE CITY COUNCIL
FILE NO. P17-06-SUR

IN RE THE APPLICATION OF
HENDERSON COUNTY,
HUNTING CREEK ASSOCIATES LLC
and THE HENDERSON COUNTY BOARD
of PUBLIC EDUCATION,
for a SPECIAL USE PERMIT FOR
PINs 9569-70-0527,
9569-60-4631 and 9569-60-9162

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND DECISION

This matter came for a hearing before the Hendersonville City Council at its regular monthly meeting on 4 May 2017 on the application of Henderson County, Hunting Creek Associates LLC and the Henderson County Board of Public Education for a special use permit with respect to PINs 9569-70-0527, 0569-60-4631, and 9569-60-9162 to build a new building for the Hendersonville High School in accordance with the terms of the application. The properties are owned by the applicants respectively and are situated either side of Ninth Avenue between North Church Street and Oakland Street, and at 1008 Fleming Street (the Hunting Creek property) in Hendersonville.

At the hearing a number of persons testified on various aspects of the proposed projects. Despite admonition from the Council, persons on both sides spoke without testifying to facts pertaining to the standards set forth. No person was denied the right to speak who claimed to have relevant testimony to offer. After every witness spoke opportunity was granted for cross examination. No one was denied the right to examine any documents presented for consideration.

Following the hearing and a motion, the City Council voted 3-2 in favor of granting the application. Because N.C.G.S. § 160A-75 requires a second vote on a subsequent day for ordinances not receiving a favorable first vote of at least two thirds of the City Council, the matter was brought before the City Council again at a special session on 5 May 2017. The following findings and conclusions are adopted as a result of the 5 May vote, and based on the testimony adduced at the 4 May hearing and any other matters contained in the record.

ISSUES

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.

(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.

(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.

(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.

(E) The use or development conforms to the general plans for the physical development of the City as embodied in this chapter and in the Land Development Plan (LDP) and the Thoroughfare Plan.

(F) 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, above. Variances may not be granted with regard to uses or to intensity.

The burden of establishing these findings of fact shall lie upon the applicant. There exists a legal presumption that a use is compatible with the neighborhood where the use is a permitted use.

The application did not contain a request for any variance.

TESTIMONY

The testimony is reflected in the minutes of the 5 June 2017 regular meeting of the City Council, which minutes are incorporated herein by reference.

FINDINGS OF FACT

1. The properties are zoned PID planned institutional district.
2. The properties contain the current Hendersonville High School main building (the "Stillwell Building"), a football and soccer field, track and bleachers, accessory buildings for educational use, and a building formerly serving a car dealership.
3. No variance was sought in the application.
4. A neighborhood compatibility meeting concerning the application was held on March 2, 2017. Notice was provided by U.S. mail to the owners of record of all property situated within 400 feet of the subject property as required by Section 7-4-4.1 of the Zoning Ordinance. Fifty-nine persons attended the meeting and spoke on a number of issues.
5. The Council specifically finds that the building and layout will proceed in accordance with the submitted plans, which plans are incorporated into these findings.
6. The project, including the closing of Ninth Avenue, the setback of the building from the Asheville Highway and Church Street, and the addition of a new parking lot, and other features shown in the plans and testified to in the hearing, adequately provides for the safety of the high schools students and families and other members of the public.
7. Nearby medical businesses, while possibly inconvenienced by the parking lot, have not sufficiently demonstrated a danger to health and safety of themselves and their patients to establish a clear danger.
8. No credible testimony was adduced at the hearing to overcome the presumption of neighborhood compatibility. This is especially true in light of the 90-year history of an existing high school on the site.
9. The site plan includes a four-story building and a gymnasium for a total of 225,000 ft². An existing 64,496 ft² building is to remain.
10. The site plan shows 215 parking spaces for the proposed 225,000 ft² project. The minimum required by the Zoning Ordinance, based on number of ft², is 202. The applicant is proposing 93 parking spaces provided on-site and 122 parking spaces provided off-site. The proposed off-site parking area is located approximately 165 feet from the subject area.
11. The site is separated by rights-of-way greater than 30 feet and therefore does not require a buffer.
12. Parking is proposed to the rear and/or side of the lot and screened from view from the public right-of-way to utilize the 10 foot setback allowance.
13. Prior to Final Site Plan approval, Parcel # 9569-60-9162 and Parcel # 9569-70-0527 shall be combined to reflect the Preliminary Site Plan boundary.
14. The applicant will be providing stormwater management plans to the Engineering Department as part of the final site plan submittal requirements.
15. According to a traffic impact analysis was completed by Mattern & Craig, Inc. for this project and submitted to the City for review on February 21, 2017, and the City Council so finds, the new Hendersonville High School is expected to generate 269 trips and 91 vehicles during the am and pm peak hours respectively.
16. The proposed Hendersonville High School expansion should not have an adverse impact on the surrounding roadway network with appropriate mitigation measures at certain intersections described below:
 - a. Intersection of Oakland Street, 9th Avenue, and the proposed entrance to Hendersonville High School:

Consider the installation of a traffic signal. A traffic signal is warranted during peak periods.
 - b. Intersection of US 25 Business and Oakland Street
 1. An exclusive northbound right turn lane along Oakland Street with about 100' of storage is necessary in order to achieve acceptable levels-of-service under future conditions.
 2. Re-stripe northbound Oakland Street with three 10' lanes at the intersection with US 25 Business. To accommodate the auxiliary right turn lane, the elimination of two parking spaces may be necessary.
 3. Due to low operating speeds at this location, 10' lane widths should be adequate to accommodate the expected traffic volumes.
 - c. Intersection of US 25 Business and 9th Avenue/North Main Street
 1. Modify the traffic signal to include a right-turn overlap phase along North Main Street to address the failing levels of service during the AM and PM Peak hours along that approach.
 - d. Sidewalks and Pedestrian Crossings
 1. At unsignalized intersections where pedestrians are expected, marked crosswalks with the appropriated warning signs should meet current ADA requirements and NCDOT standards.

2. At signalized intersections where pedestrians are expected, marked crosswalks and pedestrian signals shall be provided in accordance with NCDOT standards.

3. The pedestrian routes from the existing and proposed designated off-campus parking lot should be evaluated and all amenities/facilities be brought up to current NCDOT, City of Hendersonville, and ADA standards.

e. Internal Storage for Pick-Up and Drop-Offs

According to NCDOT Municipal and School Transportation Assistance School Calculator, 585 feet of internal storage is needed to accommodate the expected enrollment. School traffic is planned to be routed through the parking lot to the student drop-off and pick-up area to prevent queueing onto Oakland Street. The proposed Hendersonville High School shows approximately 761 feet of internal storage.

17. Hendersonville water and sewer services are currently provided and are expected to continue to be provided to the site.

CONCLUSIONS OF LAW

1. 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;

2. There are adequate public facilities to serve the use or development as specified in Section 7-11;

3. The development complies with all required regulations and standards of the zoning ordinance and with all other applicable regulations;

4. 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.

5. The development conforms to the general plans for the physical development of the City as embodied in this chapter and in the Land Development Plan and the Thoroughfare Plan.

DECISION

For the above reasons,

1. The City Council grants the special use permit in accordance with the application.

2. The special use permit shall be subject to the requirement of City ordinances, including the zoning ordinance. 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 Hendersonville Zoning Ordinance and Code of Ordinances.

These findings, conclusions and decision adopted this sixth day of July 2017.

/s/Barbara G. Volk, Mayor

Attest: /s/Tammie K. Drake, City Clerk

Approved as to form: /s/Samuel H. Fritschner, City Attorney

7. Consideration of Memorandum of Understanding between the City and Belmont Sayre Partners, LLC, for the Development Opportunity for the Grey Hosiery Mill as a Downtown Hotel:

Mr. Connet presented a Memorandum of Understanding between the City and Belmont Sayre for the development of a hotel. He explained the main purpose of the memorandum is to layout the City's expectations of all parties going forward.

Mr. Connet explained all parties will take action to move the project forward, the developer will conduct his due diligence while submitting applications for tax credits, begin financing, complete construction drawings, etc. with a deadline of January 4, 2018 in order to move forward.

Mr. Connet explained as part of the agreement, the developer will provide a \$10,000 surety upon the execution of the agreement. The surety will remain refundable as long as certain specified criteria are met and including application for tax credits by October 15. He explained the agreement defines what information is public record, what is confidential and the responsibilities for moving forward.

Mr. Connet stated the City Attorney, staff and the School of Government has been involved in developing the agreement. He reviewed the amendments made to the draft agreement. He noted item 6c that the City Manager have authority to extend the agreement for an additional 30 days at the concurrence of the City Council in order for the project to continue moving forward. He stated all parties are in agreement and requested Council approval.

Mayor Pro Tem Caraker moved the City Council approve the Memorandum of Understanding between the City of Hendersonville and Belmont Sayre, LLC. A unanimous vote of the Council followed. Motion carried. [The agreement is available in the office of the City Manager.]

8. Quasi-Judicial Public Hearing – Consideration of a Request for a Special Use Permit from William Ratchford of Triangle Real Estate of Gastonia, Inc. for the Development of 120 Multi-family Residential Units on Approximately 6.78 acres Located off Chimney Rock Road and the Rezoning Parcel Number 9680-02-4871 from HMU Highway Mixed Use and a portion of parcel 9680-02-6973 from Henderson County LC Local Commercial to PRD Planned Residential Development:

Mayor Volk explained the procedures for quasi-judicial public hearing. She stated the Council may only consider facts by expert witnesses. Legislative hearing guidelines apply. The City Council, in deciding what evidence is acceptable, has to look at competent, relevant, substantial evidence in the record. This includes

the application, staff analysis or reports, testimony and documents presented at the hearing or other related documents. The Council may not consider opinions, only facts.

Mayor Volk asked if members of the City Council had contacts concerning the application not already included in the file. Mayor Pro Tem Caraker disclosed he has had contact with the property management association who asked which building the meeting will be held in and how many chairs there are. Mayor Volk asked if this would give him any reason not to make an impartial decision. Mayor Pro Tem Caraker responded no.

Mayor Volk asked Council members to announce any conflicts of interest. There was none.

Mayor Volk asked if any person present is aware of anything of value that been given or promised in exchange for a vote to be taken on the application. There was none.

Mayor Volk asked those wishing to speak to present evidence to be sworn in. Nine people were sworn in.

Mr. Daniel Heyman, Planner, provided the following testimony.

The City is in receipt of a Special Use Permit application from William Ratchford of Triangle Real Estate of Gastonia, Inc. for the development of 120 multi-family residential units on approximately 7.44 acres. The project is located on parcel # 9680-02-4871 (main parcel) and a portion of parcel # 9680-02-6973. The proposed project will have frontage on Chimney Rock Road (US Highway 64) and will access the site through an existing private road. The density for this project is 16 units per acre. The applicant is also requesting to rezone all of parcel # 9680-02-4871 from HMU Highway Mixed Use and a portion of parcel # 9680-02-6973 from Henderson County LC Local Commercial to PRD Planned Residential Development.

The main parcel is currently zoned HMU Highway Mixed Use and contains one vacant residential structure. The portion of the other parcel (Church of God) is currently zoned LC Local Commercial by Henderson County and is vacant. Parcels to the north are zoned LC Local Commercial and R1 Residential One by Henderson County and include the North Henderson High School and a mobile home park. Parcels located to the east, west, and south are zoned PRD Planned Residential Development and include Wolfpen and Brittany Place. The remainder of the Church of God parcel includes the Hendersonville Church of God. Surrounding land uses and zoning districts are shown on the "Existing Land Use Map" and "Zoning Map".

Comprehensive Plan Consistency: The parcels included in this application and parcels located to the west and south are classified as High Intensity Neighborhood on the 2030 Comprehensive Plan's Future Land Use Map. The goal of the High Intensity Neighborhood classification is to "encourage low-maintenance, high-density housing that supports Neighborhood and Regional Activity Centers and downtown and provides a transition between commercial and single-family development and to promote walkable neighborhood design that creates attractive and functional roadway corridors and multi-family residential neighborhoods."

The parcels east of the project are classified as Medium Intensity Neighborhood on the 2030 Comprehensive Plan's Future Land Use Map. The parcels located to the north across Chimney Rock Road are classified as Urban Services Area by Henderson County on the 2020 County Comprehensive Future Land Use Map. The High Intensity Neighborhood classification lists planned residential developments as a primary use. The Comprehensive Plan recommends that primary uses such as this one occupy the majority of acreage found within this classifications boundary. He provided the 2030 Comprehensive Plan's Future Land Use Map.

Plan Review: The site plan includes six three-story multi-family buildings with a total of 120 units, 24 one-bedroom units, 48 two-bedroom units, and 48 three-bedroom units, a dog park and trail to the existing Brittany Place development, and two six-car garages. The site plan and architectural elevations are included in the site plan.

Building Height: Section 5-14-7.5 of the Zoning Ordinance states that buildings in the PRD district may exceed 35 feet in height only upon the granting of a height limitation exemption by City Council. In order to grant the exemption, City Council must find:

- a) Such building will not block sunlight from adjacent property between the hours of 10:00 a.m. and 2:00 p.m. from the months of October 1 to May 1. The applicant has submitted a sun study, which shows that no proposed building will block sunlight from adjacent properties. He provided a copy of the sun study.
- b) Such building is adequately designed and served from the standpoint of safety, and the City Fire Chief certifies that the fire safety equipment to be installed is adequately designed and that the building is reasonably well located in relation to the fire stations and equipment to offer adequate protection to life and property. In no case shall the building exceed 50 feet in height. Details on fire equipment will be handled in final plans. The Fire Department has been reviewing these plans and have made comments to the applicant, which the application has responded to. The tallest proposed building is 38 feet, two inches.
- c) The side and rear yards for any structure in excess of 35 feet in height shall be increased by one foot for each one foot in height in excess of 35 feet. Setbacks were increased on structures exceeding 35 feet in height.

Parking: The site plan shows 215 parking spaces for the proposed multi-family residential development. The minimum required by the Zoning Ordinance based on number of bedrooms is 168.

Buffer Plantings: No buffer is required because the proposed use is residential. However, the applicant is proposing to keep a 40-foot wooded area as a buffer to the neighboring Wolfpen.

Stormwater: The applicant will be providing stormwater management plans to the Engineering Department as part of the final site plan submittal requirements. They have met with the Engineering Department about their preliminary plans.

Parcel Recombination & Annexation: Prior to Final Site Plan approval, the main parcel and the portion of the Church of God parcel will be combined to reflect the Preliminary Site Plan boundary. An application for annexation has been submitted for the Church of God parcel which is currently outside of the City's jurisdiction.

Sidewalks: Section 6-12-1 of the Zoning Ordinance requires sidewalks along the property line fronting Chimney Rock Road and are shown on the site plan.

Traffic Impact Analysis: The applicant provided a Traffic Impact Analysis conducted by J.M. Teague Engineering that studied the proposed development's impact on the roadway and nearby intersections. The analysis concluded that the existing roadway is sufficient to handle the increased traffic of the proposed development and no offsite improvements are necessary.

The TIA has been reviewed by traffic engineers employed by NCDOT and an independent engineer retained by the City who concurred with the findings. NCDOT has requested a non-mandatory deceleration lane into the main entrance off Chimney Rock Road. The applicant has agreed to install that.

Density: When a proposed density is over ten units per acre in a PRD district, the Zoning Ordinance requires a density bonus approval by City Council. A density bonus can only be approved upon finding:

a) *The property on which the development is proposed is located in close proximity to a thoroughfare designated as such in the Comprehensive Transportation Plan.* Chimney Rock Road is designated as a thoroughfare in the Comprehensive Transportation Plan.

b) *Vehicular access for such development shall be limited to one or more boulevards or thoroughfares designated as such in the Comprehensive Transportation Plan.* Vehicular access is limited to Chimney Rock Road.

c) *The carrying capacity of the roadway shall be adequate to handle increased traffic associated with the development without reducing the level of service of such roadway.* It appears that the carrying capacity of Chimney Rock Road and nearby intersections is adequate to handle the increased traffic associated with the proposed development. The applicant's Traffic Impact Analysis confirmed the same.

d) *The development is proposed to be located within reasonable walking distance of places of employment and/or shopping facilities and shall provide pedestrian amenities in order to foster pedestrian access to such facilities.* The developer is proposing sidewalks along Chimney Rock Road which will connect to existing sidewalks. This requirement was satisfied by the original Brittany Place development by constructing sidewalks to the nearby Ingles grocery store at the corner of Howard Gap Road. This proposed development will have similar access to the same.

e) *The development shall provide common open space sufficient for the needs of its residents, which shall not be less than the greater of the common open space required by Section 6-16-2 or 1% of the land area of the development for each unit per acre proposed.* Any density authorized by City Council pursuant to this section shall not exceed 18 dwelling units per acre.

Section 6-16-2 requires 500 square feet of open space per dwelling unit or 10 percent of the total site. Alternatively, this section requires 16 percent based on the density per acre. The greater of these three numbers is 500 square feet per dwelling unit for a total of 60,000 square feet, or 1.38 acres. The site plan indicates 1.47 acres of open space.

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.* Water and sewer service is intended to be extended to the site. The applicant has requested annexation into the City of Hendersonville.

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. No variances are requested.

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 April 13, 2017. Notice was provided by U.S. mail to the owners of record of all property situated within 400 feet of the subject property as required by Section 7-4-4.1 of the Zoning Ordinance.

Fourteen people representing the public attended the meeting. The public raised concerns about the traffic and speeding on Chimney Rock Road, dogs and the general impact of new residents on adjacent developments, buffering, and the lack of recycling facilities. He provided a copy of the neighborhood compatibility report.

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 High Intensity Neighborhood classification lists planned residential developments as a primary use and recommends primary uses such as this occupy the majority of the acreage within the classification boundary. Therefore, the proposed development appears to conform with the Comprehensive Plan.

The Comprehensive Transportation Plan does not indicate any new improvements to Chimney Rock Road. The applicant has agreed to install the deceleration lane.

Planning Board: The Planning Board voted unanimously to recommend City Council adopt an ordinance rezoning as requested by the applicant and to approve the application of a 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.

Mayor Volk asked for questions. There was none.

William Ratchford, from 3005 Lori Court, Gastonia, NC, represents Southwood Realty, Triangle Real Estate, provided the following testimony.

Triangle Real Estate started in 1968 by his grandfather. Both Southwood Realty and Triangle Real Estate are owned jointly by this father and uncle. They own, manage and maintain approximately 16,500 units. Of those units, they have built more than 4,500 including Brittany Place and Ballantyne Commons. Brittany Place is 16 years old. This project puts a phase in front of the previous building. It will match the brick at the clubhouse and hardy board. It will modernize this complex, update the clubhouse, parking lot areas, and give a refurbishment to Brittany Place.

After hearing conversations at the Planning Board, they plan to provide a six-foot black aluminum fence along the boundary between Wolfpen and the current property as well as continuing toward the creek, up and around the church parcel, along the front of this phase of property.

The parcels have a tax value of \$177,800. This property value with current units proposed will result in a new value of approximately \$11,045,000. Brittany Place is valued at \$11,144,800. Ballantyne Commons is valued at approximately \$23 million.

They will provide the deceleration lane on the existing Brittany Place driveway to comply with NCDOT's request.

They have been in the apartment business in this area for 16 years. They have 1,610 units in Asheville. They have two regional [managers] who live in Henderson County as well as many of their Asheville employees.

Regarding materials, since they maintain and have long-term holders of complexes, they use hardy board.

Wesley Stokes from JMT Engineering will answer questions on traffic. Will Buie from WGLS can answer engineering questions.

He provided photos of Brittany Place and other developments.

Mayor Volk asked for questions. There was none. She opened the public hearing in accordance with North Carolina General Statutes by notice published in the Hendersonville Lightning. The following spoke in opposition to the development.

Scott Jones, 86 Wild Pheasant Run, in Wolfpen, provided the following testimony:

He stated the developer stated there will be a six-foot fence but it is not on the site plan. It would be beneficial and alleviate concerns about trespassing. They have a history of trespassing from Brittany Place onto their property. They have put up signs, chains links which have been removed. People continue to come on their

property and walk their dogs, etc. He stated it is a concern. A six-foot aluminum fence running the length of the property including the original rental complex, Brittany Place, would alleviate his concerns about the trespassing. He asked that it be included in the site plan that is approved.

Darryl Pennington, resident of Wolfpen, officer on their homeowners association (HOA), provided the following testimony.

Regarding the site plan, he spoke in favor of additional housing in Hendersonville. It is necessary, it needs to be affordable, and it needs to be attractive. He first heard of this from comments from members of his community. He is speaking regarding the safety and general welfare of his friends and neighbors adjacent to this site.

He was glad to hear about the installation of the border fence and that it will extend to Brittany Place because this has continued to be an issue with property owners, and their HOA, of trespassers bringing their animals onto their property and not cleaning up after their pets. This is a requirement in their community principally as a health issue. There is a dog park on the site plan located with 300 feet of their clubhouse and residents. As a result, he has heard comments, and concurs, that the site for the dog park is too close to the watershed of Wolfpen Creek. They are also concerned about the level of noise that would be generated close to the residents and the clubhouse. He asked that the dog park be moved to another section of the property. He stated he heard at a previous Planning Board meeting that it might be possible.

He concurred with Mr. Jones on the fencing of the property and the safety of their residents. He asked for consideration of the relocation of the dog park to possibly the northeast property or behind one of the garages on the north side closest to Chimney Rock Road so it is unlikely to interfere with the tranquility, peace and general welfare of their residents.

Jacquelyn Ehrlich, 301 Fox Den Court, President of HOA of 199 units closest to the project. She provided the following testimony.

She is not speaking in opposition. The developer is making an effort. The fence is very important. Moving the dog park would be good.

They are across from North Henderson High School. The speed limit is 50 miles per hour. She does not understand why there is not a speed zone where the speed limit is reduced there. They have many elderly in their development and there is no light (traffic signal) for them to exit and it is a problem. This will add additional traffic. It is very noticeable when school is in session and with the tourists. It is the main road to Lake Lure. Twice a week she hears an accident. It is a problem because NCDOT controls the area but it impacts the City. Even if they dropped the speed limit to 35 mph for the high school it would be safer for all. She is willing to work with the developer or anyone else on the plan. She expressed safety concerns.

Council Member Smith asked Mr. Pennington if he is proposing they move the playground and the dog park. Mr. Pennington stated he site plan he has does not show a proposed playground. He stated they are not concerned about a playground. Council Member Miller asked Mr. Pennington about the possibility of eliminating the dog park and increasing the playground. Mr. Pennington stated in his opinion, he does not see how it would be as disruptive as a dog park. He stated it if is going to be included, he would like it to be put on another part of property and would be happier if it is not there.

Ms. Ehrlich stated they are aware of the playground and have no problem with that. She understands the dog park is to be an amenity. The noise is a factor but even more they are concerned with water quality because it is watershed into Wolfpen Creek. They are so careful with water quality they do not allow car washing. She stated they have strict fines and self-police owners cleaning up after their dog.

Mayor Pro Tem Caraker asked the developer if there will be staff to clean up the dog park. Mr. Ratchford stated Ms. Kelly Noble, regional manager at Ballantyne, can give information about the dog park usage. He stated Mr. Buie was a tenant for a while. He stated they are seeing up to 50 percent of residents have dogs and a defined place for the dogs is needed. Owners have to be present with their dogs in the park at all times. They are planning to use turf instead of grass. There is a special AstroTurf for dogs. They also plan to hire a business that provides DNA testing. He stated maintenance checks the area daily. Council Member Miller commented an issue with the dog park is noise. He asked if the dog park could be moved so it does not abut the adjoining development.

Will Buie, WGLA Engineering, stated this was requested by Wolfpen that it this be studied. He stated they have worked to find another suitable location but did not find one. He stated they want to have dog park topography as flat as possible for accessibility purposes. He stated he believes it is important to have a centralized location for dogs. His experience as a resident is that it was well maintained at Ballantyne Commons. He stated he did not notice the barking to be offensive. They believe it is the best location, from a topographic and site planning standpoint, for the dog park.

Mayor Pro Tem Caraker asked if the locations of the dog park and the playground could be flipped to create more distance from the neighboring clubhouse from noise, etc. Mr. Buie stated yes, that will probably work.

Council Member Smith asked about an area close to Highway 64. Mr. Buie stated he is not sure it will fit there or how the site plan grading will affect the area.

Mayor Pro Tem Caraker asked if the dog park and playground locations are flipped, how much distance would be gained. Mr. Buie agreed it may be 50 feet. Mr. Ratchford agreed to flip the locations of the playground and dog park. Council Member Smith suggested a larger fence as well.

Mayor Pro Tem Caraker asked if there is a buffer. Mr. Ratchford stated there is 40 feet of woods, then the woods of Wolfpen, the entrance road to Wolfpen, and there is an elevation difference. The proposed project is higher [in elevation]. He stated owners still walk their dogs. Council Member Miller commented this is a good lesson for Council and perhaps standards should be set for where a dog park can be located in a residential area in the boundaries of a proposed subdivision. He stated there could be worse scenarios where there are no woods separating properties. He asked for a description of the proposed fence. Mr. Ratchford provided a picture of the fence they currently use. The fence is six feet in height and there is no sound barrier. Council Member Smith asked Mr. Ratchford if he would consider solid fencing around one corner. Mr. Ratchford replied he prefers making the dog park fence solid because of the presentation.

Council Member Miller asked Mr. Ratchford if he will flip the locations of the playground and dog park and install solid fencing around the dog park. Mr. Ratchford agreed. He stated they could plant an evergreen vegetation line around the back of area that will help with the noise.

Mayor Volk asked for further comments/questions from the neighbors. Mr. Jones stated they are happy with what has transpired. The public hearing was closed at 7:04 p.m.

Mayor Pro Tem Caraker moved that City Council adopt an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of parcel number 9680-02-4871 from HMU Highway Mixed Use and a portion of parcel number 9680- 02-0973 from LC Local Commercial by Henderson County to PRD Planned Residential Development, finding that the rezoning is consistent with the Comprehensive Plan, the rezoning is reasonable and in the public interest for the following reasons: to increase affordable housing.

Mayor Pro Tem Caraker further moved that City Council approve the application of Triangle Real Estate of Gastonia, Inc. for a 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, and the following additional conditions: the location of the dog park and playground will be flipped, an evergreen vegetation buffer the corner of the property and install solid fencing around the dog park. A unanimous vote of the Council followed. Motion carried.

Ordinance #17-0747

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF HENDERSONVILLE

IN RE: Estates at Brittany Place
(File # P17-14-SUR)

Be it ordained by the City Council of the City of Hendersonville:

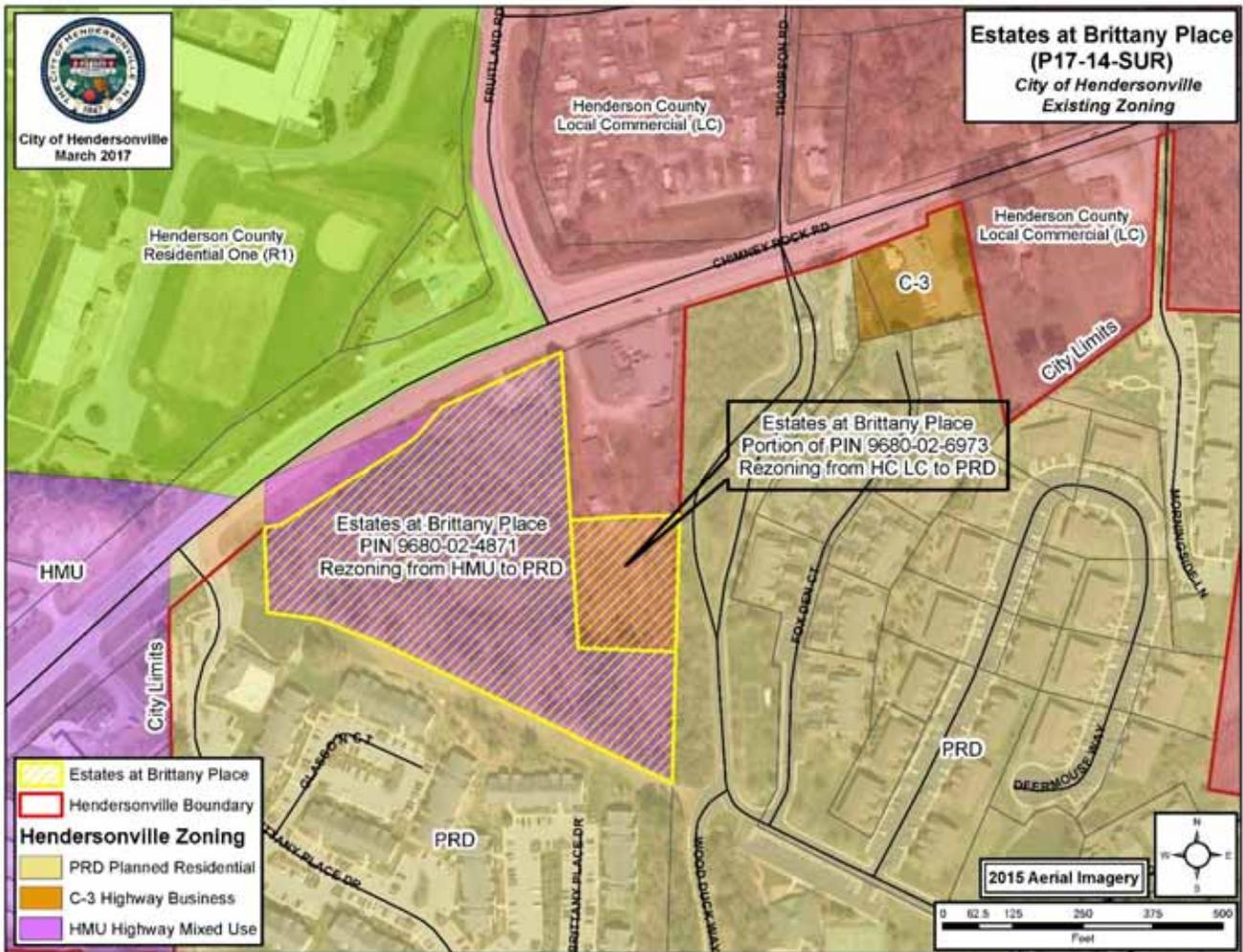
1. Pursuant to Article XI of the Zoning Ordinance of the City of Hendersonville, North Carolina, the Zoning Map is hereby amended by changing the zoning designation of the following:
Rezone Parcel # 9680-02-4871 from HMU Highway Mixed Use and a portion of Parcel # 9680-02-6973 from LC Local Commercial by Henderson County to PRD Planned Residential Development.
2. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this sixth day of July 2017.

/s/Barbara G. Volk, Mayor

Attest: /s/Tammie K. Drake, City Clerk

Approved as to form: /s/Samuel H. Fritschner, City Attorney



9. Public Hearing – Consideration of an Application from the Church of God Requesting the Voluntary Annexation of a One-acre Parcel Located off Chimney Rock Road:

Development Assistance Director Susan Frady presented a petition from the Trustees of Hendersonville Church of God for contiguous annexation of a 1.0-acre portion of parcel 9680-02-6973 located on Chimney Rock Road. This annexation application is part of the application for a special use permit for the Estates at Brittany Place. The Council accepted the Clerk’s Certificate of Sufficiency at their July 6 meeting and called for a public hearing at this meeting.

Mrs. Frady reviewed the standards set out in North Carolina General Statutes 160A-31 for annexation.

Mayor Volk opened the public hearing at 7:08 p.m. in accordance with North Carolina General Statutes by notice published in the Hendersonville Lightning. No one expressed a desire to speak. The public hearing was closed.

Mayor Pro Tem Caraker moved the City Council adopt an ordinance annexing the property included in the petition from the Trustees of Hendersonville Church of God effective July 6, 2017. A unanimous vote of the Council followed. Motion carried.

Ordinance #17-0748

AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF HENDERSONVILLE, NORTH CAROLINA
Trustees of Hendersonville Church of God

WHEREAS, the City of Hendersonville has been petitioned, pursuant to North Carolina General Statutes (NCGS) 160A-58.1, as amended, to annex the area described herein; and,

WHEREAS, the City Council has by resolution directed the City Clerk to investigate the sufficiency of said petition; and,

WHEREAS, the City Clerk has certified the sufficiency of said petition and a public hearing on the question of this annexation was held at City Hall, Hendersonville, N.C. at 5:45 p.m., on the sixth day of July 2017, after due notice by publication as by law provided; and,

WHEREAS, the City Council further finds the areas described therein meets the standards of G.S. 160A-58.1(b), to wit:

- a. The area is contiguous to the present City boundaries;
- b. The petition presented to the City Council was signed by the owners of the real property located in the area;
- c. The petition was prepared in accordance with a form prescribed by NCGS 160A -31, and
- d. At the public hearing all persons owning property in the area to be annexed who allege an error in the petition were given an opportunity to be heard, as well as residents of the City who question the necessity for annexation.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Hendersonville, North Carolina:

Section 1. By virtue of the authority granted by G.S. 160A-58.1, as amended, the following described area is hereby annexed and made part of the City of Hendersonville as of the sixth day of July 2017.

DESCRIPTION OF PROPERTY: BEGINNING at a point in the common line of the property of Trustees of East Hendersonville Church of God, now or formerly (Book 586, Page 235) and Properties at UNO, LLC (Book 1449, Page

384), said point of Beginning being situate South 03-44-48 East 328.56 feet from a point within the right of way of U.S. Highway 64 marking the common front corner of the property of Trustees of East Hendersonville Church of God and the property of Properties at UNO, LLC; and running thence a new line across the property of Trustees of East Hendersonville Church of God, South 88-04-56 East 200.02 feet to a point in the western line of Wolfpen Amenities Association, Inc. (Book 1003, Page 643); thence with the western line of Wolfpen Amenities Association, Inc., South 02-00-25 West 232.12 feet to a ¾" iron pipe, common corner of Trustees of East Hendersonville Church of God, Wolfpen Amenities Association, Inc., and Properties at UNO, LLC; thence with the line of Properties at UNO, LLC, North 87-29-34 West 176.83 feet to a planted stone; thence with another line of Properties at UNO, LLC, North 03-44-48 West, crossing a ¾" iron pipe at 199.89 feet, a total distance of 231.43 feet to the point and place of Beginning, and containing 1.0 acre, more or less.

Section 2. Upon and after the sixth day of July 2017, the above described territory, and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Hendersonville, and shall be entitled to the same privileges and benefits as other parts of the City of Hendersonville. Said territory shall be subject to municipal taxes according to NCGS 160A-31, as amended.

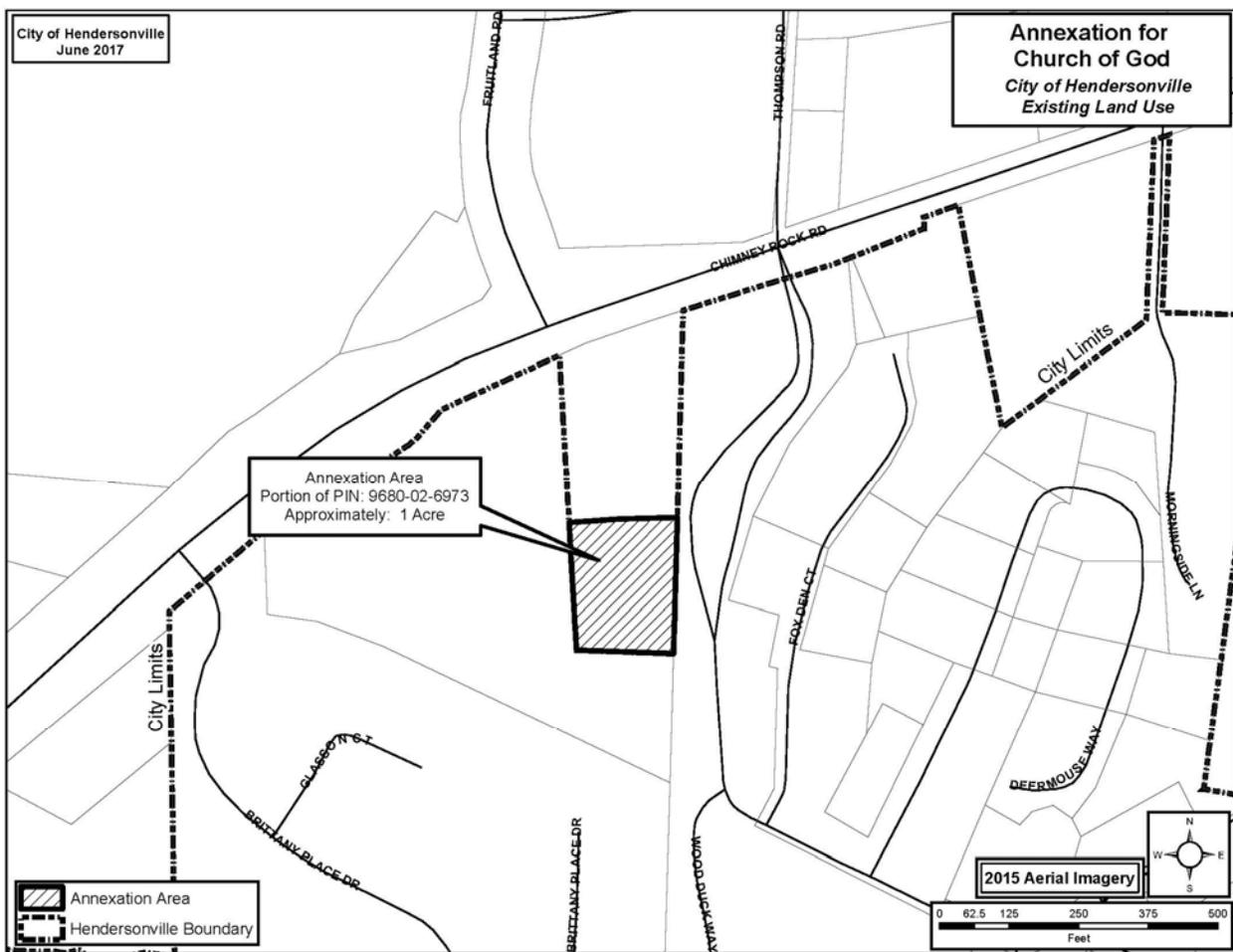
Section 3. The City Clerk of the City of Hendersonville shall cause to be recorded in the office of the Register of Deeds of Henderson County and at the Office of the Secretary of State in Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1, hereof, together with a duly certified copy of this ordinance.

ADOPTED this sixth day of July 2017.

/s/Barbara G. Volk, Mayor

Attest: /s/Tammie K. Drake, City Clerk

Approved as to form: /s/Samuel H. Fritschner, City Attorney



10. Public Hearing – Consideration of an Application from Robbie Allison Requesting Voluntary Annexation of a Parcel Located off Old Spartanburg Road:

Development Assistance Director Susan Frady presented a petition from Robbie Allison for a satellite annexation of parcel 9578-51-9624 containing 7.70 acres located at 1630 Old Spartanburg Road. She reported the map distance from the proposed satellite corporate limits is 365 feet from the primary corporate limits. The total area within the satellite corporate areas, including land involved in this petition, constitutes 3.9 percent This annexation application is related to a sewer service request.

Mrs. Frady reported the Council accepted the Clerk’s Certificate of Sufficiency at their July 6 meeting and called for a public hearing at this meeting. She reviewed the standards set out in North Carolina General Statutes 160A-31 for annexation.

Mayor Volk opened the public hearing at 7:10 p.m. in accordance with North Carolina General Statutes by notice published in the Hendersonville Lightning. No one expressed a desire to speak. The public hearing was closed.

Council Member Smith moved the City Council adopt an ordinance annexing the property included in the petition from Robbie Allison effective July 6, 2017. A unanimous vote of the Council followed. Motion carried.

Ordinance #17-0749

AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF HENDERSONVILLE, NORTH CAROLINA
Robbie Allison

WHEREAS, the City of Hendersonville has been petitioned, pursuant to North Carolina General Statutes (NCGS) 160A-58.1, as amended, to annex the area described herein; and,

WHEREAS, the City Council has by resolution directed the City Clerk to investigate the sufficiency of said petition; and,

WHEREAS, the City Clerk has certified the sufficiency of said petition and a public hearing on the question of this annexation was held at City Hall, Hendersonville, N.C. at 5:45 p.m., on the sixth day of July 2017, after due notice by publication as by law provided; and,

WHEREAS, the City Council further finds the areas described therein meets the standards of N.C. G.S. 160A-58.1(b), to wit:

- a. All of the proposed satellite corporate limits are less than three miles from the primary corporate limits of Hendersonville. The map distance is 365 feet.
- b. No point on the proposed satellite corporate limit is closer to the primary corporate limits of another city than to the primary corporate limits of Hendersonville.
- c. The area is situated so that the City of Hendersonville, if City Council so determines, will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.
- d. The area proposed for annexation is not a subdivision as defined in NCGS 160A-376.
- e. The area within the proposed satellite corporate limits when added to the areas within all other satellite corporate limits does not exceed 10 percent (10%) of the area within the primary corporate limits of the City of Hendersonville. The total area within the satellite corporate areas, including land involved in this petition, constitutes 3.9 percent of the area within the primary corporate limits.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Hendersonville, North Carolina:

Section 1. By virtue of the authority granted by N.C.G.S. 160A-58.1, as amended, the following described area is hereby annexed and made part of the City of Hendersonville as of the sixth day of July 2017.

Description of Property: Legal Description Tract 1, Slide 7786

Beginning at a nail in a tree root; thence south 69 degrees 12 minutes 31 seconds east a distance of 380.95 feet, to a #4 rebar. thence south 42 degrees 42 minutes 32 seconds west a distance of 828.38 feet to a #4 rebar in the northern margin of right of way for Old Spartanburg Highway; thence north 68 degrees 51 minutes 33 seconds west a distance of 412.92 feet, to a point in the northern margin of right of way for Old Spartanburg highway; thence north 65 degrees 13 minutes 16 seconds west a distance of 18.04 feet to a #4 rebar in the northern margin of right of way for Old Spartanburg Highway; thence north 46 degrees 57 minutes 41 seconds east a distance of 261.19 feet to a 3/4" iron pipe; thence north 41 degrees 53 minutes 05 seconds west a distance of 64.78 feet to a capped rebar;

Thence north 48 degrees 08 minutes 00 seconds east a distance of 229.08 feet, passing #5 rebars at 105.14 feet and 199.04 feet, to a capped rebar; thence north 47 degrees 47 minutes 09 seconds east a distance of 100.00 feet to a point in the western margin of a ditch; thence north 56 degrees 45 minutes 27 seconds east a distance of 256.99 feet to a nail in a tree root; which is the point of beginning.

Having an area of 335349 square feet or 7.70 acres.

Section 2. Upon and after the sixth day of July 2017, the above-described territory, and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Hendersonville, and shall be entitled to the same privileges and benefits as other parts of the City of Hendersonville. Said territory shall be subject to municipal taxes according to NCGS 160A-31, as amended.

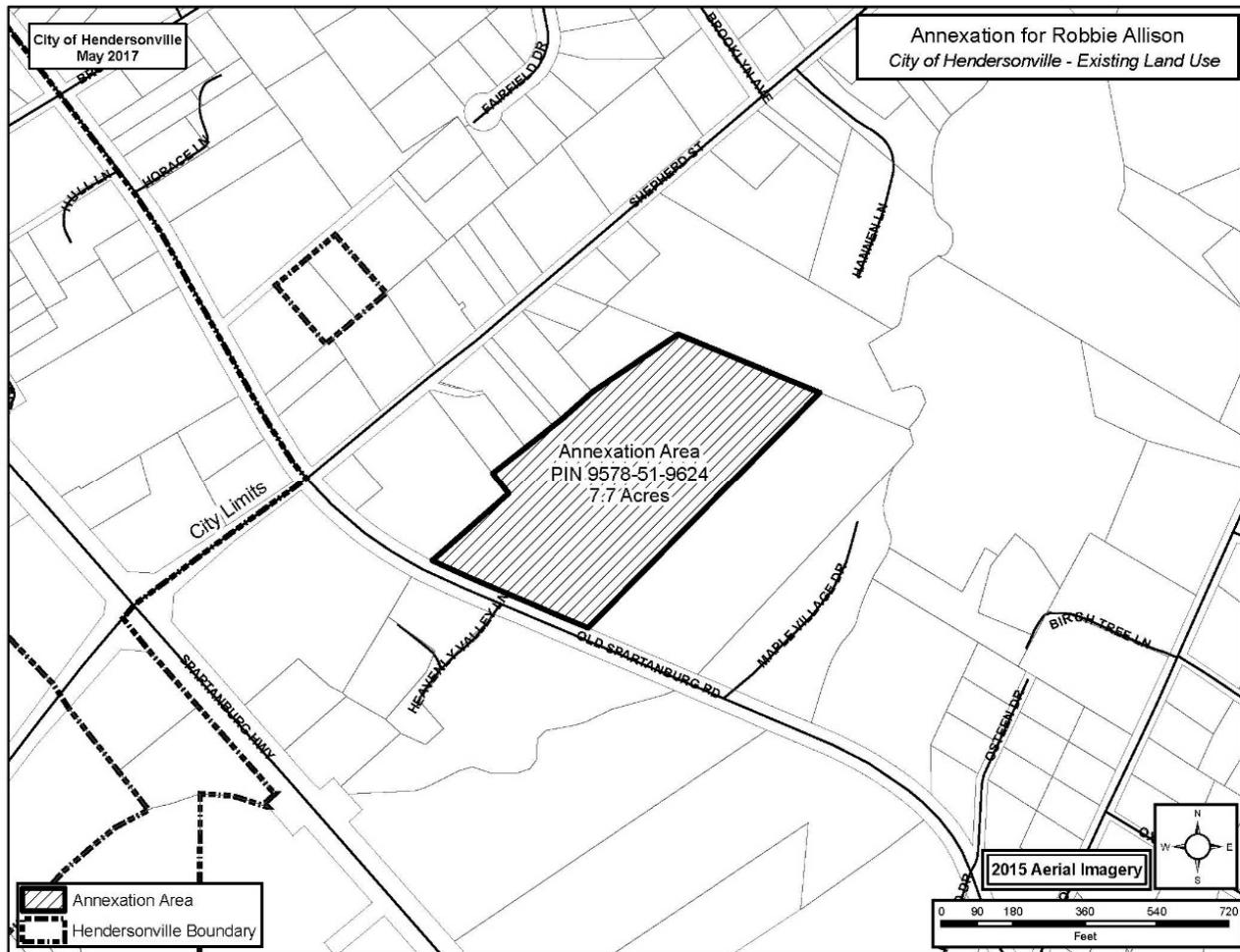
Section 3. The City Clerk of the City of Hendersonville shall cause to be recorded in the office of the Register of Deeds of Henderson County and at the Office of the Secretary of State in Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1, hereof, together with a duly certified copy of this ordinance.

ADOPTED this sixth day of July 2017.

/s/Barbara G. Volk, Mayor

Attest: /s/Tammie K. Drake, City Clerk

Approved as to form: /s/Samuel H. Fritschner, City Attorney



11. Public Hearing – Consideration of Consideration of a Request for a Zoning Map Amendment from Robbie Allison for a Parcel Located off Old Spartanburg Road from Henderson County Community Commercial to City of Hendersonville C-4 Neighborhood Commercial due to Satellite Annexation:

North Carolina General Statutes 160A-360(f) provides for the zoning of annexed property within 60 days of the annexation. Development Assistance Director Susan Frady explained now that the property is annexed, it must be zoned by the City. PIN 9578-51-9624 is approximately 7.70 acres. The uses existing on the property are a telecommunications tower and bulk agricultural supplies. The existing uses will be grandfathered. It is currently zoned Henderson County CC Community Commercial.

According to North Carolina General Statutes 160A-383, zoning map amendments must be made in accordance with a comprehensive plan. The 2030 Comprehensive Plan's Future Land Use Map designates these parcels as High Intensity Neighborhood. She reviewed the purpose of the High Intensity Neighborhood category.

Surrounding Land Uses: The parcel to the north is zoned Henderson County R1. Properties to the south and east are Henderson County Community Commercial and the property to the west is City of Hendersonville R-15, Medium Density Residential. There is a mobile home park to the south of this property and a landscaping supply business to the east. There is also an auto repair business across the street.

Analysis: This property is located in a mixed-use area. The City has both residential and C-3SU in this area and the County has Community Commercial. In order to be consistent with the current zoning in the area the request is for C-4, Neighborhood Commercial. She reviewed the purpose of the C-4 Neighborhood Commercial District classification. She stated the land uses recommended by the 2030 Comprehensive Plan's Neighborhood and Regional Activity Center future land use category are permitted in the C-4 zoning district.

Mrs. Frady reviewed the factors contained in Section 11-4 of the Zoning Ordinance that must be considered prior to adopting or disapproving an amendment to the City's Official Zoning Map.

Mrs. Frady reported the Planning Board voted unanimously to recommend City Council approve the zoning designation of C-4 Neighborhood Commercial for this property and the Board found the rezoning is reasonable and in the public interest.

Mayor Volk opened the public hearing at 7:16 p.m. in accordance with North Carolina General Statutes by notice published in the Hendersonville Lightning. No one expressed a desire to speak. The public hearing was closed.

Mayor Pro Tem Caraker moved the City Council adopt an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of parcel number 95785-19-624 from Henderson County CC Community Commercial to C-4 Neighborhood Commercial, and found the rezoning is consistent with the Comprehensive Plan, the rezoning is reasonable and in the public interest because it blends well with adjacent zoning districts.

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF HENDERSONVILLE

IN RE: FILE NO. P17-21-ANX; Robbie Allison

Be it ordained by the City Council of the City of Hendersonville:

1. Pursuant to Article XI Amendments of the Zoning Ordinance of the City of Hendersonville, North Carolina, the Zoning Map is hereby amended by changing the zoning designation of parcel number 9578519624 from Henderson County CC Community Commercial to City of Hendersonville C-4, Neighborhood Commercial.

2. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this sixth day of July 2017.

/s/Barbara G. Volk, Mayor

Attest: /s/Tammie K. Drake, City Clerk

Approved as to form: /s/Samuel H. Fritschner, City Attorney

12. Consideration of an Application from Ben Graham for the Rezoning of a Parcel Located at the Corner of Hall Street and Park Street from R-15 Medium Density Residential to R-10 Medium Density Residential

Mr. Matt Champion reported the City received an application for a zoning map amendment from Ben Graham and property owner Steve Worley. The rezoning request is for parcel 9568-43-3655 which consists of 0.54 acres. This parcel is located at the corner of Hall Street and Park Street.

Mr. Champion stated the property is currently zoned R-15 Medium Density Residential and the proposed district is R-10 Medium Density Residential. The Comprehensive Plan future land use map designates the subject area as medium intensity neighborhood. This classification is to provide a transition between high and low intensity areas while providing a wide range of housing formats and price points.

Mr. Champion stated the subject area contains a residential duplex. The R-15 Medium Density Residential zoning district surrounds the subject area. To the west of the subject area across Hall Street is Smokey Ridge Apartments which contains 56 units in five buildings on 5.2 acres. The Willows located to the southwest of the subject area contains 16 duplexes. The remaining parcels surrounding the subject area contain residential dwellings.

Mr. Champion provided a comparison of the requirements of R-15 Medium Density Residential and R-10 Medium Density Residential districts and the permitted and conditional uses in each district.

Mr. Champion reported the Development Assistance Department has not found any issues relating to the Zoning Ordinance Section 11-4 guidelines for amending the City's Official Zoning Map.

Mr. Champion stated the Planning Board voted unanimously to recommend City Council's approval of the request.

Mayor Volk opened the public hearing in accordance with North Carolina General Statutes by notice published in the Hendersonville Lightning. No one spoke in favor of the application. The following addressed the Council in opposition to the request.

Mike Williams, lives on Park Street adjacent to the subject parcel. He stated they have been in the neighborhood for about 18 years. He has no problem with a house being constructed but opposed a zoning change in the middle of R-15. He reference the comparison chart and the minimum lot area. He stated this appears to be "spot zoning." He expressed concerns about the number of homes potentially changing the neighborhood. They have issues with traffic and speeding and pedestrians. He stated additional homes will result in additional traffic. He stated the courts have allowed spot zoning when reasonable. He referred to the four factors to consider if it is spot zoning: the size and nature of tract, compatible with existing plans, the impact of the zoning decision on the land owner which would allow the landowner to build another house on the parcel and it will impact current neighbors because it would allow another house that would not be allowed under the current zoning. Lastly, the relationship between the proposed and current uses. The square footage allowed is a significant change. He stated other properties could request rezoning if this is approved.

No one else expressed a desire to speak. The public hearing was closed at 7:27 p.m.

Council Member Smith commented Mr. Graham did not attend for questions. Mayor Volk voiced concerns with one parcel being rezoned R-10 in the middle of R-15 Medium Density Residential zoning. Council Member Stephens agreed with the Mayor's concern.

Council Member Miller asked if a variance is possible through the Board of Adjustment. Mr. Champion explained the lot is conforming and they cannot create a hardship by putting another house on the property. He stated they do not have enough square footage to build anything other than a single-family residence. He stated the majority of lots in the subject area are non-conforming.

Council Member Miller asked for the City Attorney's opinion on spot zoning. City Attorney Fritschner agreed with the statements made in determining whether it is spot zoning. He commented if it is considered spot zoning by a court, the City would lose the presumption it is reasonable and would have the burden to establish reasonableness. He encouraged the Council to include their reasons if approved.

Council Member Miller moved the City Council not adopt an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of parcel number 9568-43-3655 from R-15, Medium Density Residential to R-10, Medium Density Residential. Council Member Smith asked if the Council has to state a reason for denial. City Attorney Fritschner advised, no, they do not. **A unanimous vote of the Council followed. Motion carried.**

13. Public Hearing - Consideration of a Request from Scott Bolyard and Peter Brower to Remove 3.43 Acres from the City's Extraterritorial Jurisdiction for a Project known as "The Boulders" located at 529 Randy Drive: Development Assistance Director Susan Frady presented a request from Scott Bolyard and Peter Brower of The Boulders to remove 3.43 acres from the City's extraterritorial planning jurisdiction.

Mrs. Frady explained the Council must hold a public hearing and adopt an ordinance to amend the ordinance that establishes the extraterritorial jurisdiction boundary. Once the ordinance is adopted Henderson County will apply zoning to this area and has requested an effective date of 90 days from this date.

Mrs. Frady reported the Planning Board voted unanimously to recommend City Council remove the 3.43 acres from The Boulders development from the City's extraterritorial jurisdiction. She stated Mr. Bolyard explained at the June 1 meeting that he has a master plan for the development and would like to develop it in its entirety under Henderson County.

Mayor Volk opened the public hearing at 7:35 p.m. No one expressed a desire to speak. The public hearing was closed.

Mayor Pro Tem Caraker moved City Council adopt an ordinance amending the ordinance establishing extraterritorial jurisdiction boundaries for the City of Hendersonville effective October 6, 2017. A unanimous vote of the Council followed. Motion carried.

Ordinance #17-0752

AN ORDINANCE AMENDING THE ORDINANCE ESTABLISHING EXTRATERRITORIAL JURISDICTION BOUNDARIES FOR THE CITY OF HENDERSONVILLE

WHEREAS, the General Assembly has granted authority to municipalities to adopt, administer and enforce zoning and subdivision regulation ordinances, building codes and minimum housing standards and other related measures; and

WHEREAS, N.C.G.S. § 160A-360 provides that the delegated municipal powers conferred by Article 19 of Chapter 160A may be exercised within the extraterritorial jurisdiction surrounding a municipality; and

WHEREAS, N.C.G.S. § 160A-360 further provides that any municipality wishing to exercise extraterritorial jurisdiction of powers conferred under the said Article 19 shall adopt, and may amend from time to time, an ordinance specifying the boundaries of those areas within which the City will exercise its extraterritorial jurisdiction; and

WHEREAS, N.C.G.S. § 160A-360 requires that the boundaries specified in the ordinance shall at all times be drawn on a map, set forth in a written description, or shown by a combination of these techniques, and maintained in the same manner as required by N.C.G.S. § 160A-122 for the delineation of the corporate limits; and

WHEREAS, the City has adopted an ordinance establishing extraterritorial jurisdiction and has amended said ordinance from time to time, most recently by means of an ordinance dated April 3, 2014, which ordinance clarified the geographical boundary of the extraterritorial jurisdiction; and

WHEREAS, The City has received from Cliffside at the Boulders LLC a request seeking to have certain properties subject within the City's extraterritorial jurisdiction be removed from this jurisdiction; and

WHEREAS, N.C.G.S. § 160A-360 provides for the amendment of an extraterritorial jurisdiction ordinance and the relinquishing of any part of such jurisdiction to the appropriate county; and

WHEREAS, a public hearing was held before the City Council exclusion of this real property from the City's extraterritorial jurisdiction pursuant to the requirements of Article 19 of N.C.G.S. Chapter 160A;

NOW, THEREFORE, be it ordained by the City Council of the City of Hendersonville:

SECTION 1. The written boundaries of the area of extraterritorial jurisdiction of the City of Hendersonville is hereby amended by this ordinance. The new area of extraterritorial jurisdiction is described as follows: BEGINNING at a point located in the center of Willow Road, said center also being the Laurel Park corporate limit line, and said point being approximately 135 feet east of the intersection of the center of Willow Road and the center of Country Club Road (SR 1220); thence running from said point with the center of Willow Road (SR 1171) in a southwesterly direction approximately 2,780 feet to a point in the centerline of Willow Road where said road is intersected by an unnamed tributary of Finley Creek; thence southeasterly along the center of said unnamed tributary and Finley Creek to a point in the center of Lakeside Drive where said drive is intersected by Finley Creek; thence easterly along the centerline of Lakeside Drive to a point where said drive is intersected by Texas Street; thence southeasterly, a straight line distance of approximately 1,430 feet to a point in the centerline of Kanuga Road, said point being approximately 1,400 feet northeast of the intersection of Bonner Street with Kanuga Road; thence easterly, a straight line distance of approximately 6,030 feet to a point in the centerline of Rutledge Drive, where said drive is intersected by Kings Lane; thence northeasterly, a straight line distance of approximately 1,880 feet to a point in the centerline of U.S. Highway 25 where said highway is intersected by a private drive said point being approximately 550 feet north of the intersection of Stewart Street with U.S. Highway 25; thence northeasterly, a straight line distance of approximately 3,280 feet to a point in the centerline of Southern Railway's line where said line is intersected by Brooklyn Avenue; thence in a southerly direction along the centerline of the Southern Railway line to a point in the center of King Creek where said creek is intersected by said railroad line; thence in a northeasterly direction along the center of King Creek to a point in

the centerline of U.S. Highway 176 where said highway is intersected by King Creek; thence northeasterly, a straight line distance of approximately 660 feet to the centerline of Old Spartanburg Highway; thence northwesterly approximately 70 feet the centerline of Old Spartanburg Highway to a property line projected; thence northeasterly along a property line projected and a property line approximately 291 feet to a property corner; said property line being the western property line of lot 9559, block 51 as shown on Henderson County property map 9578.19; thence northwesterly along a property line 64.51 feet to a property corner; thence northeasterly approximately 259 feet to a point on the City's boundary of extraterritorial jurisdiction; thence northeasterly approximately 900 feet to a point in the centerline of Airport Road thence in a northwesterly direction along the centerline of East Gilbert Street to its western terminus adjoining the lot identified as Henderson County PIN 9578449355, and continuing with the centerline of the unopened or unpaved right of way to the centerline of West Gilbert Street, and following the centerline of West Gilbert Street to the point of intersection of the centerline of Bradshaw Avenue, thence in a northeasterly direction with the centerline of Bradshaw Avenue (following the centerline of Bradshaw Avenue through the curve to the northwest) and thence continuing with the centerline of Blue Ridge Street to the point of the intersection of Blue Ridge Street and New Hope Road, thence northeasterly along the centerline of New Hope Road to a point located at the intersection of the centerline of New Hope Road and the centerline of Bat Fork; thence northerly, a straight line distance of approximately 3,580 feet to a point in the centerline of Tracy Grove Road, said point being approximately 200 feet west of the intersection of Duncan Road (State Road 1754) with Tracy Grove Road; thence northerly approximately 893 feet to a property corner located at Devils Fork Creek; thence easterly approximately 2,300 feet following property lines and Devils Fork Creek to property corner located on the western right of way line of Interstate 26; thence easterly approximately 180 feet along a property line projected to a point on the centerline of Interstate 26; thence northerly approximately 5,230 feet to a point located at the intersection of the centerline of Interstate 26 and a property line projected, said property line being the western property line of parcel 8609 as shown on Henderson County Property Map 9579.15, block 54; thence northerly approximately 93 feet along the western property line of said parcel to a property corner; thence easterly approximately 490 feet along the northern property line of said point to a property corner; thence northerly approximately 520 feet along a property line to a property corner; thence easterly approximately 360 feet along the southern property line of parcel 3762 as shown on Henderson County Property Map 9579.02, block 65 to a property corner; thence easterly and southerly approximately 350 feet along property lines to a property corner; thence southerly approximately 470 feet along the western property line of lot 6536, block 64, as shown on Henderson County Property Map 9579.15, to a property corner on the eastern right of way line of Prince Road; thence with the eastern right of way line of Prince Road approximately 333 feet to a property corner; thence easterly along the southern property line of lot 6536 369.83 feet the southernmost property corner of lot 6536; thence northeasterly approximately 580 feet along the southeastern property line of lot 6536 to a property corner; thence easterly approximately 585 feet along the southern property lines of lots 2125 and 8324, block 75 as shown on Henderson County Property Map 9579.02, to a property corner; thence northerly approximately 355 feet along the eastern property line of lot 8324 to a property corner; thence easterly approximately 300 feet along a property line to a property corner, said property corner being the southeastern property corner of parcel 8324 as shown on Henderson County Property Map 9579.02, block 75; thence approximately 1,100 feet along the eastern property line of said parcel to a property corner located on the southern right of way line of Sugarloaf Road; thence northerly 30 feet to a point located on the centerline of Sugarloaf Road; thence easterly approximately 570 feet along the centerline of Sugarloaf Road to a point located at the intersection of the centerline of Sugarloaf Road and a property line projected, said property line being the eastern property line of parcel 4387 as shown on Henderson County Property Map 9579.02, block 86; thence northerly approximately 550 feet along said property line projected to a point located at the intersection of said property line projected and the centerline of Howard Gap Road; thence northeasterly approximately 1,230 feet along the eastern property line of parcel 9255 as shown on Henderson County Property Map 9579.02, block 87; thence westerly 142 feet along the northern property line of said parcel to a property corner; thence northerly approximately 326 feet along the eastern property line of parcel 8857 as shown on Henderson County Property Map 9579.02, block 87, to a property corner located on the southern right of way line of Sunset Road; thence northeasterly diagonally across Sunset Road approximately 265 feet to a property corner located on the northern right of way line of Sunset Road; thence northerly approximately 1,100 feet along the eastern property line of parcel 7740 as shown on Henderson County Property Map 9579.02, block 88, to a property corner; thence westerly approximately 520 feet along the northern property line of said parcel to a property corner; thence northerly 263 feet along the eastern right of way line of parcel 4338, as shown on Henderson County Property Map 9579.02, block 89, to a property corner; thence westerly approximately 670 feet along property lines to a property corner, said property corner being the northwestern property corner of parcel 9505 as shown on Henderson County Property Map 9579.02, block 79; thence northerly approximately 675 feet to a property corner, said property corner being the northeastern property corner of parcel 6101 as shown on Henderson County Property Map 9670, block 70; thence southeast 431 feet along a property line to a property corner, said property corner being the southeast property corner of parcel 0422 as shown on Henderson County Property Map 9670, block 80; thence northerly 271 feet along the eastern property line of said parcel to a property corner; thence easterly approximately 1,030 feet to a property corner, said property corner being the southeastern property corner of parcel 7870 as shown on Henderson County Property Map 9670, block 80; thence northerly approximately 1,400 feet along property lines to a property corner, said property corner being the southwestern property corner of parcel 6504 as shown on Henderson County Property Map 9670, block 91; thence easterly 300 feet along the southern property line of said parcel to the southwestern property corner of said parcel; thence northerly along property lines and a property line projected approximately 880 feet to a point located within the right of way of Highway U.S. 64 East, said point being located at the intersection of the eastern property line projected of parcel 7577 as shown on Henderson County Property map 9670, block 92. and the southern property line projected of parcel 1167, as shown on Henderson County Property Map 9670, block 93 (North Henderson High School); thence westerly along said property line projected and said property line approximately 1,800 feet to a property corner; thence northwesterly approximately 464 feet to a property corner located at Clear Creek; thence westerly approximately 5,600 feet along Clear Creek, across Howard Gap Road and along Clear Creek to the intersection with a cross country electric power transmission line owned by Duke Power Company; thence running with the center of said power line in a westerly direction a distance of 4,250 feet to a wooden "H" frame tower near the eastern right of way of Interstate Highway 26 as shown on Henderson County Property Map 9660.04; thence leaving said power right of way and running in a southwesterly direction 1,620 feet in a straight line to a property corner in the western boundary of Parcel 2124; thence running from said property corner in a southerly direction 615 feet with said western boundary to a property corner in the northeastern right of way of Capps Road (S.R. 1508); thence running in a southerly direction 399 feet with the northeastern right of way to the southwest property corner of Parcel 3781; thence continuing across Capps Road (S.R. 1508) 60 feet to the northeast property corner of Parcel 8443; thence running from said property corner in a westerly direction 500 feet with the northern boundary line of said Parcel 8443 to a property corner on the eastern bank of Mud Creek; thence continuing from the property corner with the same course 25 feet to a point in the center of Mud Creek; thence running with the center of Mud Creek in a southerly direction 300 feet upstream to a point in the center of Mud Creek where said creek intersects Clear Creek; thence northwesterly, a straight line distance of approximately 3,700 feet to a point in the centerline of U.S. Highway 25 where said highway is intersected by a private road, said point being approximately 1,080 feet north of the intersection of State Road 1392 with U.S. Highway 25; thence south 76° 30' west 2,150 feet to a point on the eastern property line of that property designated as Henderson County PID 01 14540; thence

south with the eastern property line of that parcel and thence continuing southerly with the eastern property line of the Baldwin property designated as Henderson County PID 01 14879 to the southeastern most corner of that parcel, thence west southwesterly with the southern line of that parcel 383 feet to the southeastern most corner of that parcel; thence north 90 feet to a property corner on the southeastern property line of property designated as Henderson County PID 01 13928; thence southwest 375 feet with the southeastern line of that parcel to a property corner; thence south 15 feet to the southernmost property corner of that property; thence west northwest along the southern line of the Thomas L. Tatham Farm, Inc. property designated as Henderson County PID 01 13928 478 feet to a southwest corner of that parcel where the same borders the eastern margin of the right of way of Lyndhurst Drive; thence northerly 26 feet along the eastern margin of that right of way to its intersection with the McCoy property designated as Henderson County PID 01 10218; thence easterly, thence northerly, thence westerly all with the common boundary of the said McCoy parcel and the Tatham Farm property to the northwest margin of the said McCoy parcel; thence continuing with the western line of the Tatham Farm property 171.13 feet to a point at the southeast corner of the Cliffside at the Boulders, LLC property thence with the southern line of the Cliffside at the Boulders, LLC property North 87° 35' West 470.85 feet to a ¾ inch iron pipe, thence North 02° 47' West 184.04 feet to a #4 rebar, thence South 76° 30' West 570 feet; thence south 76° 30' west a distance of 2350 feet to a 570 feet; thence south 76° 30' west a distance of 2350 feet to a point in the centerline of Stoney Mountain Road where said road is intersected by a private drive situated between Henderson County PID 01-14999 on the west and Henderson County PID 99-70298 on the east, said point being approximately 1,740 feet northwest of the intersection of State Road 1453 with Stoney Mountain Road; thence southwesterly, a straight line distance of approximately 2,020 feet to a point in the centerline of Stoney Mountain Road where said road is intersected by a private drive situated between Henderson County PID 01 14999 on the west and Henderson County PID 99 70298 on the east, said point being approximately 1,740 feet northwest of the intersection of State Road 1453 with Stoney Mountain Road; thence southwesterly, a straight line distance of approximately 2,020 feet to a point in the centerline of N.C. Highway 191 where said highway is intersected by Holly Hill Drive, said point being approximately 1,710 feet northwest of the intersection of two private roads with N.C. Highway 191; thence southeasterly approximately 6,350 feet to the ridge line of Long John Mountain; thence southeasterly approximately 2,050 with the ridge line of Long John Mountain to a northern property corner in the northern property line of parcel 1620, said parcel also being known as Laurel Park Place and being shown on Henderson County Property Map 9559.20; thence running from said northern property corner with said northern property line in a southeastern direction approximately 880 feet to a property corner of said parcel 1620; thence running from said property corner with the southern property line of parcel 1620 in a southwestern direction approximately 560 feet to a southeastern property corner of parcel 1620; thence running from said southeastern property corner with a property line of said parcel 1620 in a northwestern direction 159.97 feet to a corner on the Laurel Park corporate limit line; thence running with the Laurel Park corporate limit line in a southern direction to a corner in the center of U.S. Highway 64W; thence leaving said Laurel Park corporate limit line and running from said corner with the center of U.S. Highway 64W in a southeastern direction approximately 860 feet to the center of the intersection of U.S. Highway 64W and Glasgow Lane as shown on Henderson County Property Map 9568.05; thence running from said intersection with the center of Glasgow Lane in a southwestern direction approximately 1,370 feet to a point in the centerline of the Norfolk and Southern Railroad, said centerline also being the Laurel Park corporate limit line; thence continuing with the Laurel Park corporate limit line in a southern direction to a point in the center of Willow Road; thence west along the center of Willow Road approximately 310 feet to the point of BEGINNING.

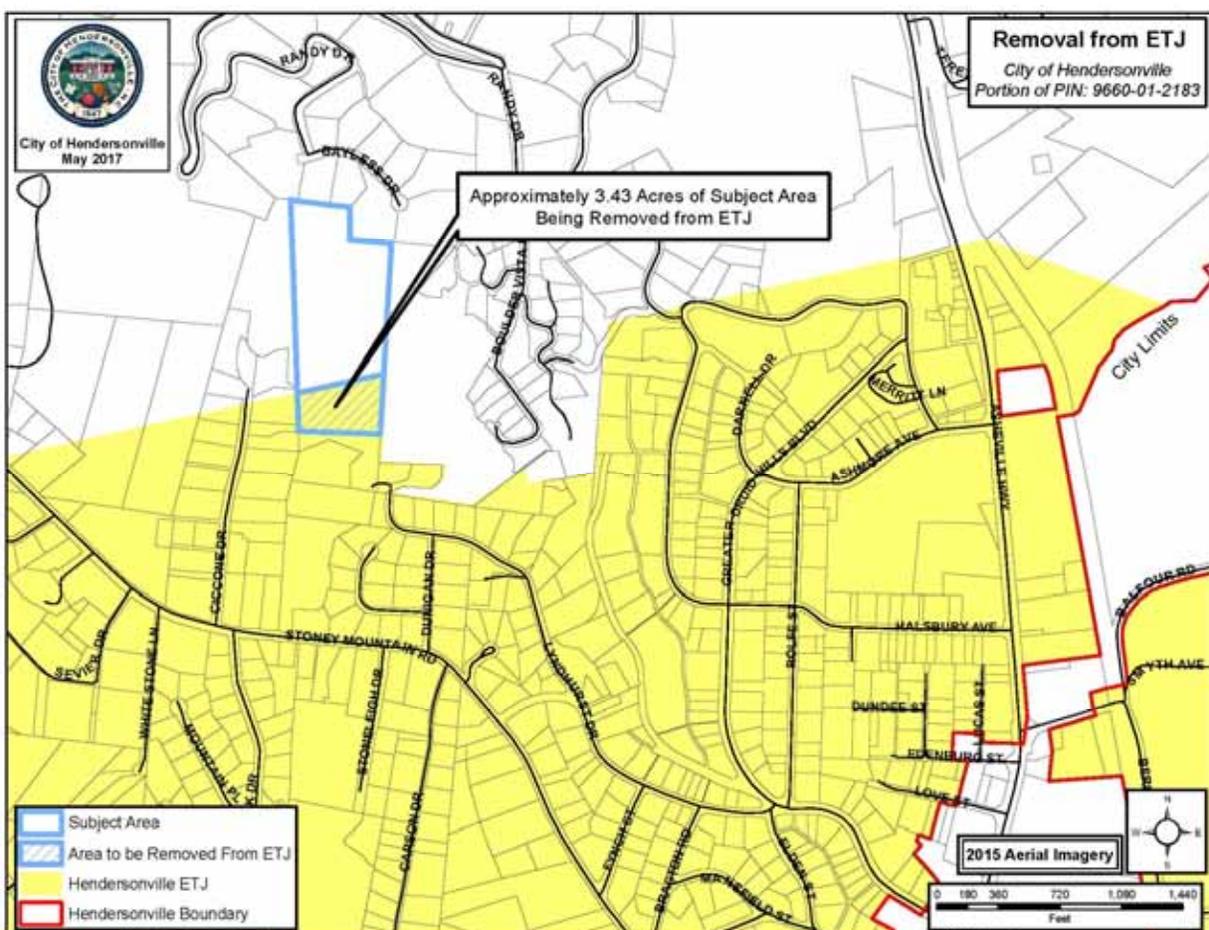
Subject to the territorial jurisdiction of the City as established by subsequent ordinances.

SECTION 2. SEVERABILITY. If any provision of this ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the remaining provisions of this ordinance.

SECTION 3. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after the date of October 6, 2017.

Adopted this sixth day of July 2017.

/s/Barbara G. Volk, Mayor
 Attest: /s/Tammie K. Drake, City Clerk
 Approved as to form: /s/Samuel H. Fritschner, City Attorney



14. Provide Staff Direction on Amending the 2030 Comprehensive Plan Future Land Use Map for the Area Located off Highway 64 West from Oak Terrace Lane past Crystal Drive: City Planner Daniel Heyman requested Council's guidance on an amendment to the City's Comprehensive Plan Future Land Use Map as a first step in the process. The amendment will change the classification of an area identified as Oak Terrace Lane westward past Crystal Drive from Low Intensity Neighborhood to Medium Intensity Neighborhood.

If the Council is willing to consider the amendment to the Comprehensive Plan Future Land Use Map, the Development Assistance Department will present it to the Planning Board for a recommendation.

Mr. Connet commented "Low Intensity Neighborhood" was established to protect the Laurel Park corridor. He stated the development is dense in the area. The Town of Laurel Park has amended their plan to show the Town Center development and MIC. He reported he inquired with the Town Manager of Laurel Park and stated they have no objection to the amendment.

Mr. Heyman explained many of the lots would conform to the future land use classification. He stated conditions of the lots warrant the change. **There was no objections to proceed with the amendment to the Comprehensive Plan Future Land Use Map.**

14a. Consideration of an Ordinance Respecting Hours of Certain Sunday Alcohol Sales: Mr. Connet reported the General Assembly recently approved municipality's ability to lower the time in which alcohol may be served or sold on Sunday, by any licensed premise, from noon until 10:00a.m. However, it requires a local ordinance.

Mr. Connet reported the City has received inquiries about adopting the ordinance. In discussion, Council Member Smith stated he is not opposed to adopting the local ordinance but would like to see if this is an issue of importance to voters of Hendersonville before he votes in favor of it. Council Member Miller reported he doesn't have a problem with it because people celebrate their Sabbath on different days. He spoke to a local pastor who stated he would not get involved in trying to block this two-hour difference because it may alienate him from some people. He stated this is a fairness issue and only adjusting hours. Council Member Stephens commented this may be a business issue with tourists here with the number of restaurants, etc. who serve brunch. He also commented on sidewalk dining. He stated he doesn't think most people will notice the difference. Mayor Pro Tem Caraker agreed with Council Member Stephens business view and commented he does not think a two-hour difference in the consumption time will make a difference as long as they are serving food. Mayor Volk commented businesses will be happy to have the ordinance enacted as many open for bunch. She also does not see a major concern with the two-hour difference. **Mayor Pro Tem Caraker moved the Council adopt an ordinance allowing the sale of alcohol in the City of Hendersonville beginning at 10:00 a.m. on Sundays. The vote was four in favor, one opposed (Council Member Smith). Motion carried.**

Ordinance #17-0753

AN ORDINANCE RESPECTING HOURS OF CERTAIN SUNDAY ALCOHOL SALES

WHEREAS, the General Assembly has pursuant to N.C.G.S. § 18B-1004(c) made it unlawful to sell or consume alcoholic beverages on any licensed premises from the time at which sale or consumption must cease on Sunday morning until 12:00 noon on that day; and

WHEREAS, the General Assembly has, since the adoption of the aforementioned prohibition, enacted N.C.G.S. § 160A-205.3, permitting a municipality to adopt an ordinance allowing for the sale of malt beverages, unfortified wine, fortified wine, and mixed beverages beginning at 10:00 a.m. on Sunday pursuant to the licensed premises' permit issued under N.C.G.S. § 18B-1001; and,

WHEREAS, the City Council considers it to be in the best interest of the health, safety and welfare of the City's residents, businesses and visitors to allow licensed premises to sell malt beverages, unfortified wine, fortified wine, and mixed beverages beginning at 10:00 a.m. on Sunday,

NOW, THEREFORE, be it ordained by the City Council of the City of Hendersonville:

SECTION 1. ALCOHOLIC BEVERAGE RETAIL SALES ON SUNDAY – HOURS. The City Council hereby declares that sale of malt beverages, unfortified wine, fortified wine, and mixed beverages shall be allowed on licensed premises within the City beginning at 10:00 a.m. on Sunday pursuant to the licensed premises' permit issued under N.C.G.S. § 18B-1001.

SECTION 2. SEVERABILITY. If any provision of this ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the remaining provisions of this ordinance.

SECTION 3. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this sixth day of July 2017.

/s/Barbara G. Volk, Mayor

Attest: /s/Tammie K. Drake, City Clerk

Approved as to form: /s/Samuel H. Fritschner, City Attorney

15. Consideration of Health Insurance Rate Changes for Employees: Mr. Connet reported the Council held a long discussion on the health insurance rate increase in the budget. The Council requested possible ways to create an incentive for employees to get and remain healthier. The Human Resources staff have been considering incentive programs.

Mr. Connet explained the first step was to raise the yearly deductible in the current budget from \$500 to \$1,000, an increase in co-pays for emergency room visits. He stated incentives were investigated to encourage employees take responsibility for their own wellness but if they do not, will be responsible for paying a portion of their health care costs.

Mr. Connet presented the amendments stating the recommendations are governed by the Affordable Care Act. There are some restrictions on implementing an incentive program.

Beginning July 2, 2018, the City will deduct up to 15% of the insurance company premiums for employees unless they join the Taking Shape wellness program, have an annual physical, attend two wellness classes or complete two wellness workshops on the wellness portal and meet current Medcost age-appropriate preventative screenings criteria.

During the calendar year of January 2018, the requirements above are still in place and additionally, tobacco users could have a deduction of an additional 25% beginning July 2019. To have this deduction waived, employees can complete the North Carolina League of Municipalities (NCLM) tobacco cessation program, Trestle Tree. Additional fees from Medcost will be added beyond the City premiums. Participation in all programs is voluntary.

Mr. Connet stated the City is providing the tools for employees to improve their health and to take responsibility for their wellness.

Council Member Smith moved Council to approve the health insurance rate changes for employees as presented. A unanimous vote of the Council followed. Motion carried.

15a. Special Appropriations Request for Eblen Charities: Council Member Smith commented that if Eblen had made a request during the budget considerations, he would have voted to approve it. He stated they are hoping to get participation from the local government. **Council Member Smith moved Council to approve a special appropriation to Eblen Charities in the amount of \$1,000.** There was discussion on whether granting a request after the budget has been approved may set a precedent. Council Member Smith explained they simply missed the deadline to make a request. **A unanimous vote of the Council followed. Motion carried.**

16. Comments for Mayor and City Council Members:

Regarding the Findings of Fact, Conclusions of Law - DISSENT presented by Council Member Smith, Council Member Miller asked how the Conclusions of Law contained therein: *"1. The proposed New HHS project is NOT located, designed, and proposed to be operated so as to maintain or promote the public health, safety, and general welfare of the residents of Hendersonville or the students at HHS."* were drawn. Council Member Smith stated he believes the location of it creates some serious safety issues as far as where it is located on Highway 25 which he mentioned at length at the hearing. He stated in his opinion, as he looks at the facts, it does not promote the public health, safety and welfare because of the additional safety issues it creates and that is why he disagrees with the conclusion made by a majority of the Council. He stated his main issue is the traffic issue and being on Highway 25. He stated Council did not discuss the noise issue a lot but he thinks the noise congestion at the school will increase a lot. He believes the location is too close to Highway 25 and it does not meet that part of the statute.

Council Member Stephens commented when the noise issue was brought up at the School Board meeting, a retired architect was there who has a lot of experience with this, says it can be sound-proofed but they should be prepared to spend a lot of money. He stated it is not in the current budget. He stated his concern is not only Highway 25 but the entrance off of Oak Street. He stated putting up a traffic light with everyone coming in and out of one entrance, and the students coming in and out of the additional parking lot, will be chaos. He stated he thinks trying to get from Oakland to Highway 25 when this is occurring will be dangerous. He stated the fire drills will put half of the students on the sidewalk. He stated as best he can tell, there is no striped pavement for emergency vehicles on the site plan. He stated if it is jammed with parents, etc. an emergency vehicle may not be able to get to the school.

Council Member Miller asked if either Council Member Smith or Council Member Stephens have spent any time with John Mitchell or the architect after the meeting to ask questions about drills, safety issues, etc. before they came to their conclusions. Council Member Stephens stated he talked to Mr. Wilkins, the principal. Council Member Miller stated he has spent a lot of time with them and was shown how they will conduct fire drills, where students go if they come out of library, etc. He stated things are planned exceptionally well and documented so they may have a better feel for the project. He stated he has spent hours with the architect and John Mitchell because he wanted to know more on the safety side. He stated he is extremely optimistic on the building being safer. He also asked if the Councilmembers have spoken with the fire chief or police chief about the safety benefits of how the building is set up compared to what they have now.

Council Member Smith stated he is going on what was presented at the hearing. They chose not to make that presentation at the meeting. He stated his conclusion is based on information from May 4. Council Member Miller stated the Council did not ask the questions that he has been asking. He believes it will be a safe place even though not ideal. He stated he has made suggestions that he believes they listened to. He stated it is not cast in stone and urged them to spend some time and ask detailed, tougher questions.

Regarding active shooter, Council Member Smith stated he appreciates having a closed building which is better than they have now. He did not mention active shooter in his comments. He stated they have the opportunity of creating the same closed building concept further away from Highway 25. He stated the original proposal(s) dealt with that issue with an "oval" of buildings with a green space in the middle specifically to address shooter and security issues. He agreed the more containment you have the more doors you can lock is a better situation but disagreed the building has to go where it is located. The same design could have been moved farther from Highway 25.

Council Member Miller stated he understands but City Council is not charged with picking the particular project. He encouraged Council Member Smith to visit Mr. Mitchell at the county. He stated they have made some changes to the parking lot that were brought up in the meeting, for the better.

Quasi-judicial hearings: Council Member Smith commented the quasi-judicial hearing process prevents private meetings with people to discuss things prior to the hearing. He stated he asked the City Attorney to investigate how the Council may deal with special use permits without quasi-judicial hearings. He stated there is a major weakness in the process. He felt handcuffed in the Hendersonville High School project. He stated the inability to ask questions prior to the hearing was not promoting justice or democracy and an exchange of ideas.

City Attorney Fritschner reported a process by which city councils may engage in zoning, called "conditional zoning." He stated it has been proved by the Court of Appeals and legislation. Approximately one-third of the hearings of this type in North Carolina are held by conditional zoning. Conditional zoning is 100 percent legislative. There are certain things cities are required to do but all of the due process strictures that are required in quasi-judicial hearings are absent. He stated staff has discussed this and are waiting for the revision of Article 19 by the General Assembly. He stated this may be accomplished and staff is up to the challenge if so directed by the City Council. The amendment will undergo the same process as other Zoning Ordinance amendments.

Council Member Smith expressed concerns about the judicial requirements. He stated wants he to be free as a council member to talk to anyone before he has to vote on an issue. He stated council members are not judges and the quasi part creates issues. Council Member Stephens agreed the Council should know more but cannot discuss it. City Attorney Fritschner commented it is also easier to defend a legislative decision because a higher court is not reviewing legal judgments made.

After discussion, **the Council agreed by unanimous assent to pursue this amendment.**

Council Member Stephens commented the traffic issues and the stacking of traffic has not been addressed in the Hendersonville High School project. Council Member Miller stated he has also discussed traffic issues with Mr. Mitchell. He stated he had detailed conversations about safety.

17. Reports from Staff:

A. Contingencies Report: Mr. Connet reported on contingency funds expended to close out fiscal year 2016-17.

B. NC League of Municipalities Annual Conference: This will be held September 20-23.

City Attorney Fritschner reported he will be attending the Annual Municipal Attorneys conference and will not be present at the August 3 Council meeting. He will be available by phone.

No action was required or taken by the Council.

18. Boards and Commissions: Consideration of (Re)Appointments, Announcement of Upcoming Vacancies:

a) Consideration of Appointments: City Clerk Tammie Drake announced the (re)appointments and presented the applications on file.

Business Advisory Committee: No action was taken.

Henderson County Tourism Development Authority: Mr. Michael Burnette was nominated by Mayor Pro Tem Caraker for Seat 4. A unanimous vote of the Council followed. Motion carried.

Downtown Advisory Committee: No action was taken.

b) Announcement of Vacancies and Upcoming Vacancies: Mrs. Drake announced the vacancies and upcoming vacancies/reappointments: Board of Adjustment, Seventh Avenue Advisory Committee, Downtown Advisory Committee, and the Historic Preservation Commission.

19. New Business: There was none.

20. Adjournment: The meeting adjourned at 8:25 p.m. upon unanimous assent of the Council.