

May 7, 2015
Regular Meeting of the City Council
Council Chambers – City Hall
5:45 p.m.

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

Staff Present: City Manager John F. Connet, City Attorney Sam Fritschner, City Clerk Tammie Drake, Planning Director Sue Anderson, Police Chief Herbert Blake, Engineering Director Brent Detwiler, Zoning Administrator Susan Frady, Fire Chief Dorian Flowers, Public Information Officer Tara Ledbetter, Utilities Director Lee Smith, Finance Director Lisa White, Public Works Director Tom Wooten

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

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

Donald Buck, 53 Lindsay Loop, Flat Rock, NC, relayed fluoride in the water is not necessary.

Russell Templeton, Greenville Highway, Hendersonville, NC, chiropractor, spoke against fluoridation of the water supply.

Ken Fitch, 1046 Patton Street, offered a suggestion on issues such as the Ingles proposal: to form a cooperative framework whereby stakeholders gather to develop a plan for future similar to Main Street, Seventh Avenue, etc.

Ron Taylor, 112 Mockingbird Drive, spoke in opposition of the fluoridation of the water supply. Asked the Council to educate themselves on fluoride.

Robert Roland, 515 Brookside Camp Road, spoke in opposition of the fluoridation of the water supply.

Mayor Volk thanked those for their comments but the issue is not on the agenda.

4. Consideration of Agenda:

Additions to Consent Agenda:

- I. Consideration of the Re-adoption of the Citizen Participation Plan
- J. Consideration of a Resolution Authorizing the Execution of a Municipal Bridge Agreement with the North Carolina Department of Transportation for the Replacement of a Bridge on Old Dana Road

Mayor Pro Tem Stephens requested postponement of item 13. Discussion of Tethering Ordinance.

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

5. Consideration of Consent Agenda: *These items are considered routine, non-controversial in nature and are considered and approved by a single motion and vote.*

A. Consideration of Minutes: March 10, 2015 Special Meeting and April 2, 2015 Regular Meeting

B. Consideration of an Interlocal Agreement with Henderson County for Development Assistance Department (DAD): Mr. Connet reported the Henderson County Board of Commissioners approved the Interlocal Agreement between Henderson County and the City for the leasing of space in the King Street Office Building for the establishment of the Hendersonville Development Assistance Department. He requested approval of the agreement that includes a lease of \$10 per square foot for five years. *[The agreement is on file in the office of the City Clerk.]*

C. Consideration of “Walk of Fame” Committee (moved to regular agenda for discussion)

D. Consideration of Special Event Permits for:

i. Music and Dance on North Main Street: Mrs. Frady reported this first-time event will be held May 9 and May 16, 2015 from 5:00 - 7:30 p.m. The applicant requested every Saturday throughout the summer but the Downtown Advisory Committee recommended that additional events be approved based on the success of these events. The Special Events Committee recommended these two events be approved and that the Downtown Advisory Committee and Special Events Committee review the outcome of these two events at their May meetings and consider the approval of future events. No events will be approved that conflict with other festivals/events during the same time such as Garden Jubilee. The applicant is obtaining buy-in from other merchants that would be impacted by this event.

The event will be held on the sidewalk on North Main Street and Sixth Avenue. The request is to use the sidewalk in front of the Green Room Café for a live band. In case of rain, it will be held under the patio at the Skyland building. The event is to attract more people to the north end of Main Street where there are very limited events.

Mrs. Frady reported the Special Events Committee voted unanimously to recommend approval of a special event permit for Music and Dance on North Main.

ii. Creative Art Demonstrations: Mrs. Frady reported this first-time event of art demonstrations will be held on Saturday, May 9 and Saturday, May 16, 2015 from 11:00 to 3:00 P.M.

The Downtown Advisory Committee recommended that additional events be approved based on the success of these events. The applicant had requested every Saturday throughout the summer. The Special Events Committee recommended that these two events be approved and that the Downtown Advisory Committee and Special Events Committee review the outcome of these two events at their May meetings and consider the approval of future events. No events will be approved that conflict with other festivals/events during the same time such as Garden Jubilee.

The event will be held on the sidewalk in front of the Green Room Café at 356 N. Main Street. The request is to use the sidewalk in front of the Green Room Café for a local artist to demonstrate their art. In case of rain, it will be held under the patio at the Skyland building. This event is to attract more people to the north end of Main Street where there are very limited events.

The Special Events Committee voted unanimously to recommend approval of a special event permit for the Creative Art Demonstrations.

E. Consideration of Job Description for Payroll and Benefits Coordinator: Human Resources Director Jennifer Harrell and Finance Director Lisa White requested changes to a position and associated job description to assist the Human Resources Department. The Senior Accounting Technician is taking on additional responsibilities to ensure that employee benefits are properly administered and thus updating the position to Payroll and Benefits Coordinator. *[The job description is available in the office of the Human Resources Director.]*

F. Consideration of Seventh Avenue Façade Grant Program: Mr. Connet reported the Hendersonville Main Street and Main Street Local Historic District Programs currently offer façade grants for properties within their respective districts. The Seventh Avenue Advisory Committee is requesting authority from the City Council to offer facade grants within the Seventh Avenue MSD. They believe this will provide property owners some incentive to make improvements to the front of their buildings.

Historic Downtown Hendersonville

Façade Grant Program

Main Street & Seventh Avenue Grant Guidelines

■ Introduction – Purpose of the Façade Improvement Program

The architectural quality of downtown is important to Hendersonville; it contributes significantly to our economy, our image and our history. The City of Hendersonville's Downtown Development Program and Historic Preservation Commission (HPC) have developed a façade grant program to provide assistance to property owners in the rehabilitation of historic downtown properties in our Main Street and Seventh Avenue municipal service districts. Hendersonville's Façade Improvement Program is a grant based incentive intended to encourage and provide financial inducement for the:

- Rehabilitation of commercial building facades within the Main Street and 7th Avenue Municipal Service Districts.
- Implementation of appropriate design standards for the rehabilitation of historic properties including the Secretary of the Interior's Standards for Rehabilitation (see Appendix A) and, as appropriate, the Historic Preservation Commission's Main Street Local Historic District Design Guidelines.
- Preservation of the unique architectural and commercial character of historic downtown Hendersonville.

Each year Hendersonville's Downtown Development Program and Historic Preservation Commission set aside limited funds for the Façade Improvement Program. Grants will be awarded for eligible projects on a funds-available basis. Those interested in the program can consult with the Downtown Economic Development Director to determine funding availability. The fiscal year for the program begins July 1 and ends on June 30.

■ What is a Façade? A facade is defined as the exterior walls of a building which are adjacent to or front on a public street. Each storefront of a building can be considered a façade. The rear of a building may also be considered for a façade grant, with priority given to the front of a building.

■ Who is Eligible? There are two primary districts which are eligible for Façade Grants in downtown Hendersonville, the Main Street Municipal Service District and the Seventh Avenue Municipal Service District. Properties in and around

the Main Street Municipal Service District which fall into the Main Street Local Historic District are eligible for additional grant funding through the Historic Preservation Commission. A map of these areas is included at the end of this document and should be referenced to determine if the applicant is eligible for the Façade Grant Program.

- Any property owner or business tenant in the downtown Hendersonville Main Street or Seventh Avenue Municipal Service Districts and/or the Hendersonville Main Street Local Historic District is eligible.
- Only buildings whose current or historic use is commercial are eligible for the Façade Grant program.
- Only one application may be submitted for each façade. A property owner, a building's business tenant or an owner and tenant jointly, may submit a Façade Grant application.
- If a building has multiple facades, each tenant with a separate entrance may apply. Where a single tenant occupies multiple facades, the tenant is eligible for one application per façade.

■ What is Eligible? Please note that the following lists are not intended to be all inclusive. Each project will be reviewed according to the project's location by the Main Street or Seventh Avenue Design Sub-Committee on its individual merits.

Activities eligible for a Façade Grant include:

- Removal of false fronts, metal canopies and other additions that detract from a building's historical and architectural character
- Safe cleaning of brick or wall surfaces – chemical stripping, scraping and water wash. Power washing is not recommended
- Exterior painting, including trim and previously painted surfaces
- Historic reconstruction – storefront, door or window repair or replacement, masonry repointing, etc.
- Approved awning installation
- Approved exterior lighting
- Address information – numerals, building name, etc.

Activities not eligible for a Façade Grant include:

- Installation or removal of signage
- Roof and Chimney repair
- Installation of any type of inappropriate material that interferes with the historic integrity of the building
- Sand blasting
- Removal of historic features
- Landscaping

G. Consideration of Seventh Avenue Tax Incentive Program: Mr. Connet reported the Seventh Avenue Advisory Committee has been searching for ways to encourage additional redevelopment on Seventh Avenue. Several similar Downtown MSDs across the state have created and had some success with an economic development incentive programs for their districts. The Seventh Avenue Advisory Committee is requesting the City Council establish a tax incentive program for redevelopment or infill projects within the Historic Seventh Avenue Municipal Service District. They believe this will provide property owners additional incentive to make improvements to their properties.

Seventh Avenue Municipal Service District Tax Incentive Program

Purpose: The Seventh Avenue Municipal Service District Incentive Program is intended to encourage the rehabilitation of buildings and/or promote infill growth with new development in the Seventh Avenue Municipal Service District. Anticipated benefits of the program include:

- Reduction in blighted buildings
- Increases in property value of redeveloped properties
- Support of locally owned businesses
- Growth of a strong commercial district.

Qualifications for Tax Incentive Program: To qualify for the Seventh Avenue Municipal Service District Tax Incentive Program, a property owner or developer within the municipal tax district is expected to:

1. Submit a letter of interest with proposed development plans to the Hendersonville City Manager for review by the Seventh Avenue Advisory Committee and the City of Hendersonville Development Assistance Department.
2. The letter should include a statement from the developer stating the project would not have been considered had it not been for the Tax Incentive Program.
3. The developer must meet all other state and local development requirements.
4. Obtain the tax value of site or building as determined by the Henderson County Tax Assessor before renovation/construction begins. (tax value at time of application)
5. Obtain the tax value of site or building as determined by the Henderson County Tax Assessor after the renovations /construction is completed.
6. Developer pays full amount of newly appraised tax value on property annually.
7. City of Hendersonville "grants back" the amount of Hendersonville property and Municipal Service District tax paid by the property owner, minus the original tax value payment before the renovation/construction began.
8. This process will be followed for a grant period of five years or until the property is sold, whichever occurs first.
9. On the sixth and subsequent years, the developer will pay full amount of the newly appraised tax value of the property without grant.

Example: Empty 1 acre of land or vacant building - \$50,000 tax value

.44= \$220 Annual City of Hendersonville Tax
 .12= \$60 Annual Municipal Service District Tax
 \$280 Total Annual Tax (Before Development)

Completed development - \$1,000,000 Construction / Development - \$750,000 tax value

.44 = \$3,300 Annual City of Hendersonville Tax
 .12 = \$900 Annual Municipal Service District Tax
 \$4,100 Total Annual Tax (After Development)

Grant Proposal: Under the above example, owner pays \$4,100 annually in City and MSD Taxes. Owner is then granted back annually \$3,820 (\$4,100 - \$280) for 5 years = \$19,100 Total Grant.

Please submit all inquiries regarding the Tax Incentive Program to: Hendersonville City Manager

H. Consideration of a Resolution Adopting the South Mountains Hazard Mitigation Plan: Mr. Connet explained the South Mountains Regional Hazard Mitigation Plan was developed in cooperation with

Henderson, Polk, Rutherford and Transylvania Counties along with the municipalities within the region. The plan was reviewed and approved by North Carolina Emergency Management and the Federal Emergency Management Agency for compliance with the North Carolina Emergency Management Act and the Robert T. Stafford Disaster Relief and Emergency Assistance Act. An approved Hazard Mitigation Plan is required in order to receive state and federal disaster assistance. *[The South Mountains Hazard Mitigation Plan is available in the office of the City Clerk.]*

Resolution #15-0514

RESOLUTION TO ADOPT THE SOUTH MOUNTAINS REGIONAL HAZARD MITIGATION PLAN

WHEREAS, the City of Hendersonville is vulnerable to an array of natural hazards that can cause loss of life and damages to public and private property; and

WHEREAS, the City of Hendersonville desires to seek ways to mitigate situations that may aggravate such circumstances; and

WHEREAS, the development and implementation of a hazard mitigation plan can result in actions that reduce the long-term risk to life and property from natural hazards; and

WHEREAS, it is the intent of the City of Hendersonville City Council to protect its citizens and property from the effects of natural hazards by preparing and maintaining a local hazard mitigation plan; and

WHEREAS, it is also the intent of the City of Hendersonville City Council to fulfill its obligation under North Carolina General Statutes, Chapter 166A: North Carolina Emergency Management Act and Section 322: Mitigation Planning, of the Robert T. Stafford Disaster Relief and Emergency Assistance Act to remain eligible to receive state and federal assistance in the event of a declared disaster affecting the City; and

WHEREAS, the City of Hendersonville in coordination with Flat Rock, Fletcher, Henderson County, Laurel Park, Mills River, Polk County, Columbus, Saluda, Tryon, Rutherford County, Bostic, Chimney Rock Village, Ellenboro, Forest City, Lake Lure, Ruth, Rutherfordton, Spindale, Transylvania County, Brevard and Rosman has prepared a multi-jurisdictional hazard mitigation plan with input from the appropriate local and state officials; and

WHEREAS, the North Carolina Division of Emergency Management and the Federal Emergency Management Agency have reviewed the South Mountains Regional Hazard Mitigation Plan for legislative compliance and has approved the plan pending the completion of local adoption procedures.

NOW, THEREFORE, BE IT RESOLVED that the City of Hendersonville City Council hereby:

1. Adopts the South Mountains Regional Hazard Mitigation Plan; and
2. Agrees to take such other official action as may be reasonably necessary to carry out the proposed actions of the Plan.

Adopted on May 7, 2015.

/s/Barbara G. Volk, Mayor

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

Approved as to form: /s/Samuel H. Fritschner

I. Consideration of the Re-adoption of the Citizen Participation Plan: Mrs. Tammie Drake, City Clerk, reported the NC Department of Commerce requires the City to (re)adopt a Citizen Participation Plan which involves citizens in the planning, implementation and assessment of the Community Development Block Grant (GDBG) program. This is associated with the CDBG for the Dana community water line project.

Citizen Participation Plan

This plan describes how the City of Hendersonville will involve citizens in the planning, implementation and assessment of the Community Development Block Grant (GDBG) program. The funds must be used for projects which benefit low and moderate income persons and aids in the elimination and prevention of slums and blight. The program is intended to assist governments in understanding neighborhood improvement programs. The regulations give ultimate responsibility for the design and implementation of the program to local elected officials and also require that citizens be given an opportunity to serve in a key advisory role to these elected officials.

SCOPE OF CITIZEN PARTICIPATION

Citizens will be involved in all stages of the CDBG program, including program implementation, assessment of performance and design of changes in the Citizen Participation Plan. There will be three (3) general mechanisms for their involvement:

1. To serve as an advisory committee to the project;
2. To attend or hold public hearings or community meetings; and
3. To provide individual citizen efforts in the form of comments, complaints or inquiries submitted directly to the Program Administrators or designated Town official.

PROGRAM IMPLEMENTATION

Citizen participation in program implementation will occur primarily through consultation with the City. The City will be asked to review and comment on specific guidelines for approved projects. They will also meet to review any program amendments, budget revisions and program modifications. All such changes will be discussed with the City and their comments considered prior to taking action. If program amendments require approval from the North Carolina Department of Commerce, a public hearing shall be held specifically on the amendment. Citizens may also be involved in implementation of projects specifically requiring citizen participation, such as self-help projects. Their roles will be defined as the project develops. Technical assistance will be available as needed.

PROGRAM ASSESSMENT

Program assessment activities by citizens will occur in a variety of ways. A performance hearing will be held thirty to sixty (30 to 60) days prior to the start of planning for the next program year. The Program Amendment will be asked to provide citizen commentary for the Grantee Performance Report.

As a part of the orientation to the program offered at the public hearing, citizens will be invited to submit comments on all aspects of program performance through the program year. Comments should be submitted in writing to John Connet, City Manager. He will respond in writing within ten (10) days. If the response is unsatisfactory, the complainant should write directly to Barbara G. Volk, Mayor. She shall respond within ten (10) days.

If the citizen is still dissatisfied, he/she should write to the NC Department of Commerce, Community Investment, 4313 Mail Service Center, Raleigh, NC 27699-4313, Attention: Citizen Participation Matter. Program staff will also be available during normal business hours to respond to any citizen inquiries or complaints at 919-571-4900.

The Citizen Participation Plan will be subject to annual review and proposed revision, to occur in the period between the performance hearing and the public hearing on the subsequent year's application.

TECHNICAL ASSISTANCE

Technical Assistance will be provided to citizen organizations and groups of low/moderate income persons or target area residents upon request to City of Hendersonville. Such assistance will support citizen efforts to develop proposals, define policy and organize for the implementation of the program. It is expected that such assistance will be provided directly to the City in response to their request. Assistance could be provided in the form of local presentations, informational handouts, research of a specific issue or other short-term efforts.

PUBLIC INFORMATION

The *City of Hendersonville* will also undertake public information efforts to promote citizen participation. These efforts will include the following:

1. Public Notice of all Public Hearings will be published in the non-legal section of the local newspaper at least ten (10) days before the scheduled hearing. These notices will indicate the date, time, location and topics to be considered. These notices will also be made available in the form of press releases, as a public service announcement to local radio stations and will be provided to churches within the target area of distribution.
2. Orientation Information will be provided at the first public hearing. The Program Administrator(s) will make a presentation which covers:
 - (a) the total amount of CDBG funds available and the competitive basis for award;
 - (b) the range of eligible activities;
 - (c) the planning process and the schedule of meetings and hearings;
 - (d) the role of citizens in the program and
 - (e) a summary of other program requirements, such as the environmental policies, fair housing provisions and contracting procedures.
3. A Public File containing program documentation will be available for review at the *City Office* during normal business hours. Included will be copies of the Application, Environmental Review Record, the Citizen Participation Plan and the Annual Performance Report. Other program documents are also available for citizen review on request at the *City Office* consistent with applicable State and local laws regarding personal privacy and obligations of confidentiality.
4. Public Hearings: an interpreter will be provided for all non-English speaking individuals and/or deaf individuals.

ADOPTED, this the seventh day of May, 2015.

/s/Barbara G. Volk, Mayor

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

J. Consideration of a Resolution Authorizing the Execution of a Municipal Bridge Agreement with the North Carolina Department of Transportation for the Replacement of a Bridge on Old Dana Road: Mr. Wooten presented a resolution approving a Municipal Bridge Agreement with NCDOT for the replacement of a bridge on Old Dana Road (Tracey Grove Road by Mustang Cafe). This project is on the State Transportation Improvement Program (STIP) as project B-5929. The total estimated project cost is \$1,040,000. The City will be eligible for reimbursement of up to 80 percent of the total cost and NCDOT (or FHWA) will be responsible for 20 percent of the total costs.

RESOLUTION #15-0515

A RESOLUTION AUTHORIZING THE EXECUTION OF A MUNICIPAL BRIDGE AGREEMENT WITH THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION FOR THE REPLACEMENT OF A BRIDGE ON OLD DANA ROAD

WHEREAS the City of Hendersonville City Council is informed by City staff that a certain bridge designated as Bridge #440350 over Devil's Fork Creek on Old Dana Road is in need of replacement, and

WHEREAS the said bridge can be replaced by the North Carolina Department of Transportation at a reasonable cost, and

WHEREAS the City can recover a substantial part of the cost of replacement of the bridge from sources outside the City of Hendersonville, and

WHEREAS for the foregoing reasons the City Council desires to enter into an agreement with the North Carolina Department of Transportation for the replacement of the bridge,

NOW, BE IT THEREFORE RESOLVED that the City Council does hereby authorize and request the Mayor to execute a Municipal Bridge Agreement with the North Carolina Department of Transportation for the replacement of Bridge #440350 over Devil's Fork Creek on Old Dana Road.

Adopted this seventh day of May 2015.

/s/Barbara G. Volk, Mayor

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

Approved as to form: /s/Samuel H. Fritschner

Council Member Caraker requested item 5c Walk of Fame Committee on the consent agenda be moved to the regular agenda, item 17a. for discussion. **Council Member Caraker moved approval of the consent agenda as amended. A unanimous vote of the Council followed. Motion carried.**

6. Recognition by Mayor Barbara Volk: Henderson County Robotics Team 1225: Mayor Barbara Volk and City Manager John Connet recognized student members, “The Gorillas”, Henderson County Public Schools’ First High School Robotics Team 1225. Mayor Volk presented them with a certification of commendation in recognition of winning the North Carolina Regional Robotics Competition, earning the “Excellence in Engineering Award sponsored by Delphi, and earning an invitation to play in the FIRST Robotic Competition World Championships in St. Louis. Mayor Volk also commended the founders and team leaders whose mission is to advance science, technology, engineering and mathematics education in our local and national communities.

6a. Recognition of Municipal Clerk’s Week: Mayor Volk recognized Municipal Clerk’s Week in the State of North Carolina and expressed appreciation to the City Clerk Tammie Drake.

7. Introduction of Mountain Excellence Principle of the Month, Recognition of Service Excellence and Achievements: City Manager John Connet explained the Design Team of the Service Excellence program has designed a program to continue the efforts of improving our customer service by identifying a Principle of the Month and provide coaching to employees on the principle. The principle for May is “professionalism”: leading by example, taking pride in their job and appearance, being competent and organized, and applying policies evenly and fairly.

A. Finance Department Staff: Finance Director Lisa White provided an update on the organizational changes to the Finance Department including an effort to make the billing collection more time and cost-efficient. She explained a contest was held for updating the most customer records and commended **Faye Kearney and Peggy Pack** for updating the most records.

B. Police Officers: Police Chief Herbert Blake and Council Member Caraker recognized Officers Matt Capps and Cory Payne for exemplifying the Service Excellence principles by assisting a disabled motorist.

C. Interim Fire Chief Joseph Vindigni: City Manager John Connet recognized Interim Fire Chief Joseph Vindigni for completing the National Fire Academy’s Executive Fire Officer Program.

8. Quasi-Judicial Public Hearing – Consideration of an Application from Ingles Markets for a Special Use Permit to Replace the existing 46,379 square foot Ingles grocery store Located at 625 Spartanburg Highway with a new 72,000 square foot Ingles grocery store and a Gas Express and to Rezone Certain Parcels and Portions of Parcels on/near Spartanburg Highway from C-3 Highway Business to PCD Planned Commercial Development: Mayor Volk explained the procedures for quasi-judicial public hearing stating they are required by the State of North Carolina in certain situations. Quasi-judicial hearings differ from regular public hearings in that interested persons have the following rights: to cross examine witnesses, to present evidence, to inspect documentary evidence presented against them, and to be afforded all the procedural steps set out in the pertinent ordinance and statute.

Mayor Volk explained the City Council may only consider factual information and/or expert testimony and not feelings or opinions. She asked those who anticipate speaking to be sworn in. Twelve persons were sworn in to provide testimony.

Mayor Volk asked the members of City Council to announce any contacts concerning the application that are not included in the file. Council Member Miller disclosed a conversation about quasi-judicial proceedings with the Planning Director. He stated it did not influence him in any way but taught him about future quasi-judicial hearings. Mayor Pro Tem Stephens also disclosed a conversation with the Planning Director who told him to call the City Engineer. He stated it did not influence him in any way.

Mayor Volk asked the members of City Council to announce any conflicts of interest they may have pertaining to this matter. There was none.

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

At 6:31 p.m., Mayor Volk opened the public hearing in accordance in North Carolina General Statutes by notice published in the Hendersonville Lightning.

Ms. Susan Anderson, Planning Director, requested the Council enter into the record file #P-15-8-SUR and requested the Council to take official notice of the Zoning Ordinance, the official zoning map, the 2030 Comprehensive Plan and the Comprehensive Transportation Plan. She provided the following testimony:

The City is in receipt of a Special Use Permit application from Ingles Markets to replace the existing 46,379 square foot Ingles grocery store located at 625 Spartanburg Highway with a new 72,000 square foot Ingles

grocery store and a Gas Express. This project includes the following parcels: parcel #9568-94-0252, #9568-83-9870, #9568-94-0455, #9568-83-9764, and an approximate .23-acre of parcel #9568-84-7009.

This application is for special use review. The preliminary site plan is subject to recommendation by the Planning Board and approval by City Council. The final site plan is subject to City staff approval.

Existing Land Uses & Zoning: Two of the parcels currently have a 46,379 square foot grocery store with 254 parking spaces on 5.7 acres and are zoned C-3 Highway Business. All additional parcels to be included in the Special Use Permit are currently zoned C-3 Highway Business. There are two vacant buildings located on parcels 9368-83-9870. Parcel 9568-83-9764 is vacant and parcel #9568-84-7009, of which a portion is to be added to this site, includes two buildings with professional services, offices and retail uses.

The proposed site will include the above-mentioned parcels or portions thereof and have a total of 7.23 acres.

Comprehensive Plan Consistency: The parcels included in this project are classified as Neighborhood Activity Center on the 2030 Comprehensive Plan's Future Land Use Map. Surrounding parcels are also classified as Neighborhood Activity Center. The goal of the Neighborhood Activity Center is to "concentrate retail in dense, walkable mixed-use nodes located at major intersections in order to promote a sense of community and a range of services that enhance the value of Hendersonville's neighborhoods."

Plan Review: General: The site currently has a 46,379 square foot grocery store with 254 parking spaces on 5.7 acres. The applicant is proposing to replace the existing grocery store building and two other buildings with a 72,000 square foot grocery store and a Gas Express. The Gas Express will have a 5,418 square foot canopy that also includes a kiosk for the attendant. The proposed site will have a total of 7.23 acres.

Street Closing: On May 2, 2013, City Council adopted an Order to Permanently Close portions of Joel Wright Drive, Copper Penny Street and an unopened alley surrounding the Ingles grocery store. Also in May 2013, Gary and Cindy Jones, landowners of an adjacent property, filed a civil action against the City and Ingles. As it pertains to the City, the lawsuit asks the court to set aside the City's closing of the street. This lawsuit is scheduled for trial in June.

Redevelopment in the Floodway and Special Flood Hazard Area: Section 17-2-4 of the Zoning Ordinance allows redevelopment to occur on existing developed sites which no longer function as natural flood plain and when such redevelopment will not result in any further loss of flood-plain functionality. This section states that "where feasible, redevelopment proposals should demonstrate an improvement in the site's functionality as a flood plain. In light of this intent, redevelopment of existing developed sites shall be permitted within the floodway and special flood hazard area only when the applicant has satisfactorily demonstrated the following:

- a) The proposal is to redevelop an existing developed site as of the date of this ordinance evidenced by substantial coverage of the site by buildings, fill, gravel or paved drives or parking areas or other impervious surfaces.
- b) There shall be no loss of flood storage capacity on the site as a result of the redevelopment.
- c) The applicant, utilizing best management practices, shall reduce the post-redevelopment rate of stormwater runoff from the pre-redevelopment rate of runoff, if feasible. In any event, the post-redevelopment rate of runoff shall not be greater than the pre-redevelopment rate.
- d) The project design, including any best management practices (BMPs) will result in a project which is consistent with the purposes of the Natural Resources Protection Ordinance as stated in Section 17-1. In this regard, the applicant shall demonstrate the following:
 - 1) The project shall not degrade the quality of the water in creeks, streams, ponds and lakes that flow into and out of the City.
 - 2) The project shall not contribute to future flooding problems.
 - 3) The project preserves the water carrying capacity of watercourses and the natural water storage of the special flood hazard area.
 - 4) The project protects land and watercourses from pollutants, sedimentation and erosion.
 - 5) The project retains open spaces in order to protect their environmentally-sensitive character; and
 - 6) The project protects and conserves significant natural resources from degradation due to urbanization.
- e) The applicant shall comply with all relevant provisions of the Flood Damage Prevention Ordinance including obtaining a no-rise certificate, if needed.

Johnson Ditch: Johnson Ditch runs along the western border of three parcels and the eastern border of an additional parcel that relates to this special use permit request. Currently a portion of Johnson Ditch is in a culvert. The applicant has received approval and a permit from the US Army Corps of Engineers to replace 253 linear feet of existing culvert and to install 300 linear feet of new culvert which will result in an additional 300 feet of Johnson Ditch being underground. The applicant will discuss this issue further in their presentation.

Stormwater: The applicant will be improving the site's stormwater management meeting current Phase II stormwater management requirements.

Sidewalks: In addition to a sidewalk along the parcel boundary fronting Spartanburg Highway, there will be a sidewalk connecting Spartanburg Highway to the front of the building. There will also be a sidewalk connecting a portion of the rear parking lot which travels along the western parcel boundary and connects to the front of the building. This sidewalk also connects the parcel intersections with Copper Penny Street and Joel Wright Drive. There are currently no sidewalks connecting Greenville Highway with the site along these streets.

A condition was added to the List of Uses and Conditions for the applicant to provide a minimum five-foot wide sidewalk meeting City standards connecting the site to Greenville Highway along Copper Penny Street, or equivalent location as agreed to by the City. Staff has reviewed this condition with the applicant and the applicant has agreed to coordinate with Public Works to construct this sidewalk.

Landscaping: In areas where no bufferyards are required, Zoning Ordinance Section 15-9 (b) requires a five-foot wide planning strip between vehicular use areas and abutting properties. Those planting strips are shown on the preliminary site plan. Actual plantings are shown on landscaping plans that are submitted with the final site plan. The applicant is waiting on additional surveying results and will need to add the five-foot wide planting strip between the proposed sidewalk and the western property boundary. This revision to the site plan is still pending and is added to the List of Uses and Conditions and will be shown on the site plan submittal.

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

A traffic impact analysis has been completed by Mattern & Craig and has been reviewed by Kimley-Horn & Associates, the traffic consultant for the City. This TIA was based on a store size of 77,427 square feet. Based on the Institute of Transportation Engineers Trip Generation manual, a 77,427 square foot grocery store and eight gas pumps is estimated to generate a total of 7,923 daily trips. Since the store is reduced in size, staff did not require that the TIA be amended to reflect a reduction in daily trips.

Since the development of the TIA, an additional change has occurred in the preliminary site plan. The change includes a full access right-in, right-out driveway being modified to be a right-in only driveway. This proposed additional driveway on Spartanburg Highway, which the applicant has requested a variance to allow, was reviewed by Kimley-Horn & Associates.

Variance Requests:

Parking: Table 6-5-2 of the Zoning Ordinance requires one space for each 200 square feet of gross floor area. Based on 72,000 square feet, 360 parking spaces are required. The applicant is requesting a variance from the parking requirements reducing the number of required parking spaces from 360 to 237. The applicant has supplied a parking analysis comparing actual parking needs at two other sites. Those sites include an Ingles store in Fletcher and an Ingles store in Arden. Based on that parking analysis, peak parking needs resulted in a parking ratio of one space for each 426 square feet of gross floor area. The requested variance results in a parking ratio of one space for each 304 square foot of gross floor area.

Driveway: Zoning Ordinance Entry Corridor Overlay Section 5-18-4.3 Driveways limits the number of driveways on any road frontage to not more than two and limits the total number of driveways serving a site to three. The purpose of this provision is to limit the number of curb cuts (driveways) along major highways in order to improve traffic flow.

The proposed site plan shows three access points along Spartanburg Highway, one driveway access from Copper Penny Street and one driveway access from Joel Wright Drive. Currently, the site has two driveway access points along Spartanburg Highway, one driveway access from Copper Penny Street where Copper Penny Street dead ends at the parcel boundary and one driveway access from Joel Wright Drive where Joel Wright Drive dead ends at the parcel boundary.

The applicant is requesting a variance from Zoning Ordinance Section 5-18-4.3 to allow an additional driveway along Spartanburg Highway. A variance is also necessary to allow the project to exceed the maximum number of driveways which is currently limited to a total of three.

Section 5-18-4.3 allows that additional driveways may be permitted when they are necessary to improve traffic movement, increase sight distances or for other safety reasons. Kimley Horn & Associates has provided the following comments:

Considerations: The US 176 corridor remains one of the high accident corridors within the City of Hendersonville. Consistent efforts have been made by the City through development code requirements, small area plan studies, TIA ordinances and site plan review to improve the access management along the

corridor. The purpose of these efforts has been to create a coordinated strategy for improved traffic operations and safety.

Findings: Based on direction provided in the City of Hendersonville Zoning Ordinance and the NCDOT Driveway Manual, the following points are offered for consideration in the evaluation of the proposed three driveways.

□ The NCDOT Driveway Manual provides direction regarding the number and spacing of driveways along a corridor. US 176 is a corridor with heavy traffic volumes and a history of documented safety concerns. According to the Driveway Manual, a minimum of 1,000 feet should be provided between driveways. Currently, the site has approximately 400 feet of frontage along US 176.

□ Under these circumstances, three driveways along US 176 is inconsistent with the City of Hendersonville Zoning Ordinance.

□ The City of Hendersonville Zoning Ordinance sites reasons to consider a variance regarding the maximum number of driveways:

a) Traffic Operations – when the addition of a driveway is determined as needed to mitigate unfavorable traffic operations on the public street.

b) Safety - when the addition of the driveway is demonstrated to significantly improve a documented safety concern.

The current variance application has excluded information that would demonstrate how the proposed third driveway would address or enhance existing and proposed traffic operations and safety along US 176 corridor. Nor has the application documented the operational need for a third driveway. The traffic study performed for the proposed development only considered an access configuration that included the third driveway. The lack of analysis for conditions that exclude the third driveway eliminates the possibility of an objective comparison of operations and safety. Therefore, there is no evidence demonstrating that a third driveway is necessary to maintain adequate levels of service and there is no evidence presented suggesting that the addition of a third driveway enhances safety.

Building Setback Variance: Zoning Ordinance Section 5-15-4.1 Setbacks require that Planned Commercial Developments shall have a minimum setback of 25 feet from any exterior property line. The applicant is requesting a variance from this requirement to allow approximately 333 square feet of the northwest corner of the building to encroach into the 25-foot setback reducing the setback to three feet.

Analysis: She reviewed the required findings contained in Section 7-4-10.1 of the Zoning Ordinance and provided the following response:

(A) Based on comments from Kimley Horn & Associates, the applicant has not shown any evidence that adding an additional right-in driveway on Spartanburg Highway is necessary to maintain adequate levels of service or enhance safety.

(B) The property is currently served by water and sewer.

(C) Section 7-4-14 allows that 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.

The applicant is requesting the following variances:

1. A variance from Zoning Ordinance Table 6-5-2, reducing the number of required parking spaces from 360 to 237.
2. A variance from Zoning Ordinance Section 5-18-4.3 increasing the number of driveways a development parcel may have on any given road from two to three. A variance is also necessary to allow the project to exceed the maximum number of driveways which is currently limited to three.
3. A variance from Zoning Ordinance Section 5-15-4.1 Setbacks allowing 333 square feet of the northwest corner of the building to encroach 22 feet into the required 25-foot setback. She provided the variance request applications.

(D) A neighborhood compatibility meeting concerning the application was held on March 16, 2015. Notice was provided by U.S. mail to the owners of record of all property situated within 400 feet of the subject property.

Approximately ten members of the general public attended the meeting. The public asked questions regarding the following: access to the property, parking and the reduction of parking, location of the parking spaces, deceleration lane, Brownfield contamination, gas pumps, stormwater and Johnson Ditch. She provided a copy of the neighborhood compatibility report.

(E) The 2030 Comprehensive Plan's Neighborhood Activity Center category is intended to "concentrate retail in dense, walkable mixed-use nodes located at major intersections in order to promote a sense of community and a range of services that enhance the value of Hendersonville's neighborhoods." The Comprehensive Transportation Plan does not indicate any improvements to Spartanburg Highway.

Planning Board: The Planning Board took this matter up at its regular meeting of April 13, 2015. The Planning Board made the following recommendations:

The Planning Board voted five in favor and one opposed to recommend City Council approve a variance from Zoning Ordinance Table 6-5-2, reducing the number of required parking spaces from 360 to 237 because of the need for Ingles in that area.

The Planning Board voted five in favor and one opposed to recommend City Council not approve a variance from Zoning Ordinance Section 5-18-4.3 Driveways, increasing the number of driveways a development parcel may have on any road from two to three due to safety reasons on this particular road.

The Planning Board voted unanimously to recommend City Council approve a variance from Zoning Ordinance Section 5-18-4.3 Driveways, increasing the maximum number of driveways a development parcel may have from three to four.

The Planning Board voted four in favor and two opposed to recommend City Council approve a variance from Zoning Ordinance Section 5-15-4.1 Setbacks allowing approximately 333 square feet of the northwest corner of the building to encroach 22 feet into the required 25-foot setback to allow construction of the new building.

The Planning Board voted unanimously to recommend City Council adopt an ordinance amending the official zoning map of the City changing the zoning designation of the abovementioned parcels from C-3 Highway Business to PCD Planned Commercial Development, finding that the rezoning is consistent with the Comprehensive Plan, the rezoning is reasonable and in the public interest for the reason of the new Ingles project. The Planning Board also voted unanimously to recommend that City Council approve the application of Ingles Markets 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.

Ms. Anderson reviewed the variance requests and suggested motions.

Applicant presentation:

Mr. Preston Kendall, with Ingles Markets, gave the following testimony: Ingles wants to upgrade the store that has been there a long time and give the people in that area a more up-to-date, customer-friendly store. He reviewed an aerial photo stating they now have 46,379 square feet and want to replace it with 72,000 square feet and seven gas pumps. The new store will look similar to the store in Mills River but won't be as big. It will have everything that store has plus more. A side-by-side comparison shows it will help the appearance of Spartanburg Highway in this area and offer the customers more than they can get out of the store now. He asked others to make presentations to address questions they received at past meetings.

Samia Coker, with Robertson Loia Ruth architects and engineers, representing Ingles, gave the following testimony: She reviewed an elevation drawing of the front façade of the proposed store #77, with the introduction of stone into the elevation as a material for the base, a typical Ingles design with gabled entries, a café on the right, the wine department on the left, and a drive-through pharmacy. She also reviewed the plans for the interior of the store: a Starbucks kiosk, a produce department with a new layout, a café with daylighting, a large deli area with a chef's kitchen where they offer "Chopsticks" Asian cuisine, pizza and subs. There will be a large bakery, salad bar and soup kiosks. There will be a large seafood department, meat department and wine department, a walk-in beer cave and a pharmacy. Another nice feature of the store is that aisles are split for convenience. She provided a 3D elevation of the store showing the streetscape feel, the stone and windows from the café. She reviewed a photo of the Store #148 in Lincolnton, NC, with a similar design. They have three stores deigned to earn Energy Star projects and have been doing this with the Ingles stores. That means the EPA recognizes it as being in the top 25 percent of energy-efficiency designs within that industry. Ingles is able to meet this because they use a lot of energy efficient methods including an energy management system, daylight harvesting and heat reclaim, etc. She reviewed a photo of some recently-constructed gas pumps stating it has a lot of the same language and materials as the store. It is aesthetically pleasing, has stone and brick columns, and neutral colors.

Robert Billings, owner of New River Engineering, testified he is a floodplain consultant, a professional engineer in North Carolina and South Carolina, a professional hydrologist, and a certified floodplain manager. He has been doing this practice for approximately 20 years working in water resources primarily in western North Carolina. He provided the following testimony: He reviewed the Mud Creek floodplain from a FEMA FIRM (Flood Insurance Rate Map) map. This is a wide floodplain and this is the fifth flood study he has done in this area. He will not get into floodplain issues. If there is a development in the floodway, a flood study is required which has to prove that the development in the area will not harm a neighbor. He completes an investigation, walks the creeks, looks at the culverts, takes a lot of information into account and puts it in a flood study and stamps it. He sent it to Susan Frady who reviewed it thoroughly and sent it to Raleigh. They review the flood study and if they approve it, they send a letter to Susan. This flood study has been approved. It took a while for approval because there are some issues. The no-rise certificate has been achieved and the Corp of Engineers 404-401 permit has been applied for and received.

When he first started coming to this area, he saw a trestle downstream on Mud Creek. It is important because this really impacts how Mud Creek behaves. This is downstream of all of the development in Mud Creek and it backs up everything above this. He pointed out the railroad trestle, Mud Creek, Johnson's Drainage Ditch, and the area of development on a map. They have seen some reduction in the flood plain in recent years because the beaver population is being kept under control and it has helped the floodplain quite a bit. He reviewed an aerial map showing the trestle, Mud Creek, and White Street, and stated floodwater gets backed up. One of the best ways to minimize flooding potential in this area is to watch the beaver population. He has been working with Susan Frady and they have discussed this quite a bit. He pointed out the area beside the Ingles store, downstream toward Spartanburg Highway, where the very large concrete box will be placed. Down the street is the existing local drainage structure that is corrugated metal pipe, old and rusted, nearing the end of its life span. The hydraulics of these pipes is very poor. A concrete box is much more efficient, can move more water and it will help this.

The flood study that he put his seal on is for a 100-year event storm. During that event, the water will back up. A concrete pipe, new pavement and new infrastructure will have a positive impact on the local drainage for the one-year and two-year event storms. He asked for questions. There were no questions.

John Cox, Land Planning Associates, civil engineer for the project, provided the following testimony: They are requesting a parking variance. Based on a 72,000 square foot building, they would be required by the ordinance to have 360 parking spaces for this site; they have proposed 237 parking spaces. They studied their store in Fletcher on Highway 25 as well as the store on Long Shoals Road in Arden specifically for this project. To widen the amount of information, they also studied Lincolnton, NC, Dallas, NC, Powell, TN, and another store in TN and included that data. They concluded out of the six stores, the busiest store was the Fletcher store on Highway 25. The times of the study were Thursday 4-6 and Saturday 4-6, a week-day and a weekend day for the six stores. They found the worst-case scenario with 158 cars in the parking lot at that time.

He noted they are going to be splitting their employee parking from their customer parking at this store. He also wanted to break it out for the Fletcher store. During the same study with 158 cars in the parking lot, between 4-5, 51 employees were on staff at the Fletcher store at the time of the study which gave them a customer count of 107 customer cars that were in the parking lot at that time. He noted they did not pick a store with few numbers so it would help them. The Fletcher store is one of the top five out of the 200 stores Ingles has and shows 107 customers at one of the busiest stores.

He pointed out the area in front of the store that shoppers will be most likely to park in: the core area of the parking lot which is 131 parking spaces. They intend to have employees park at the rear of the building in the 58 parking spaces. They will have a similar number of employees at this store as they have at Fletcher.

If they remove the 58 parking spaces, they only need 107 and they have 131 in the core area that will be just for their customers. The 131 spaces available is more than the 107 needed according to the study. This is only considering the core area and the employee spaces at the rear. They have another 48 spaces; 15 along the left side of the building, 22 in front and beside the gas express and another 11 spaces at the front right. That summarizes how they came up with the justification for the variance request. He asked for their consideration.

Preston Kendall stated the next variance is the setback needed off of the property line. He read the following statement: "As you know, both the City and Ingles are involved in litigation regarding claimed easement rights crossing the Ingles property. While Ingles has not conceded or does not concede the existence of any easement rights at all, Ingles realizes that the fact of the litigation could delay our project. Instead of delaying our project and further waiting on the litigation, we decided to rearrange our store, we made our store smaller, etc."

He reviewed a slide with the existing store and the litigation area which is all the way around the store and connects the two drives. In 2013 when they presented this to the City, the store was bigger and it was actually sitting in part of this area. Today's plan shows not sitting in that area any more. If the store was moved back to where it was proposed in 2013, they wouldn't need the setback variance. Since they have moved it, it requires them to get a variance. The proposed claimed easement is in their parking field, through parking places and islands, around the back of the store where they load and unload trucks every day and have for years. The new easement, the new plan is the same exact way.

Regarding the third driveway, they have five or six entrances or exits off Spartanburg Highway. The Sherman's Superette property they bought has three on that property, plus the other two. None of them are designated right-in or right-out, they are full access. Customers go in and out whichever way they want every day. They are proposing to do one full, lighted intersection where the traffic light is. They are proposing the non-signalized entrance where it is today and getting rid of three entrances and making a right-in. The right-in will come into the gas station. If they build this store, this will their 100th+ store/gas station. The traffic study was done by Raymond Kemp. They have dealt with Raymond Kemp and Mattern & Craig about the gas stations. If they have a right-in into the gas stations, it cuts down on traffic accidents. It is easy to get in to. Most of the people who are going to shop in a grocery store, get their groceries and will go to the red light, and they will park in the parking field. The right-in is just before the gas station so it will alleviate cars from stacking at the red light and they can get into the parking lot, get gas and get out, without going into the

parking field where the grocery shoppers will park. They believe from a safety standpoint this is taking pressure off of the red light and will be an easier way for people to get into their parking lot and it will be safer. That ended their presentation and he asked for questions.

Council Member Caraker asked if they are going to build a concrete encasement that connects to the existing one under Highway 176 and extend it and asked how big it is. Mr. Cox stated they will not be tying to the pipe along Spartanburg Highway. There will be an open area between the driveway and the pipe. They will install a 5' x16' live box culvert. Council Member Caraker stated he discussed this with Mr. Barnett and there are maintenance issues there. He stated it would be good if they could drive a small piece of equipment in there to clean it out quickly. Mr. Cox stated the problem with a piece of equipment is they are trying to keep the ground above as low as they can so where there is a 10-year storm it can continue to pass as it does today. They are limited in the depth. Council Member Caraker asked if it will be an open box on either end. Mr. Cox stated yes. Council Member Caraker asked how long it will be. Mr. Cox stated they are adding about 290 feet in addition to what is piped off today. They will be taking what is piped there today out and replace it all. Council Member Caraker commented this is an improvement.

Council Member Miller asked if they are referring to Johnson ditch. Mr. Cox stated yes. Council Member Miller asked what size pipes they are removing. Mr. Cox stated they are taking out three 60-inch corrugated metal pipes. If it is broken down, it will be three to our square feet more than is there now. He stated the flow characteristics of concrete versus CMP are greatly improved from the corrugation that is in it. The calculation of square footage he is giving is based on four feet of depth, not five feet. In a creek situation like this, they allow for a foot of sediment in the bottom of the pipe because they know it will occur. They are putting in a five-foot pipe, sink it into the ground, and will end up with four feet of fillable area which is more than the flow area that is there now plus the characteristics of the flow will be better.

Mr. Billings stated the FEMA floodplain model that he used for this is along Mud Creek proper that goes under the parking lot on White Street. That is the portion that is in the floodplain. The floodplain is wide and is in the model, but because it is backed up with water, it doesn't have a major impact. He stated he is certifying that the 100-year event will not increase. He thinks the improvements they are putting in will have a positive impact on the one-year event and the two-year event.

Council Member Caraker asked if there is a retention pond. Mr. Cox responded there is no current retention pond. He stated in a 100-year flood, the creek will flood with water. It is not by State regulation a stormwater pond; there is no controlled structure on it and they are not detaining water. They will have less impervious on the new site plan and they will continue not to have a pond. Council Member Caraker commented this is the worst spot for flooding in the county.

Mayor Volk asked if anyone wanted to speak in favor of the application. There was none. She asked if anyone wanted to speak in opposition to the application. Following is a summary of the speakers and their comments.

Jim Barnett, owns property on Greenville Highway and Spartanburg Highway in close proximity to the store. His primary concern is stormwater and the flooding issue. Ingles has been very professional on briefing him on every phase of the project. Their engineer had an on-site briefing with him. He doesn't want to object to Susan's findings because she bases it on engineer's studies, etc. but pointed out items in the Zoning Ordinance that is not met. He read Section 17-2-4 that requires there shall be no loss of flood storage capacity and projects shall not contribute to future flooding problems. He explained how the stream operates when there is a heavy rain, and how the stream meanders throughout properties. He stated the culvert is not large enough in flooding situations and neither is the next culvert. He stated this culvert will not be large enough in flooding conditions. He spoke about the conditions during heavy rain including the flooding of Greenville Highway. The City had a comprehensive study done in the southside in 2002-03 and asked the Council to take into consideration the recommendation in the study that another stream should not be covered. He stated he is in favor of Ingles redeveloping their project but cautioned the slightest issue can cause problems.

Mr. Cox responded they have looked at it. Ingles recognizes and admits there is a flooding problem and have tried their best to hire people that know the most about this end of town to do the study. To make their site plan feasible, it is almost a necessity to be able to pipe it. He noted the stream is already piped. They have an area that is open but the water is coming from the direction Mr. Barnett spoke about. He stated in reality, they are not making the condition worse, but making the piping better. The smaller storms will be able to flow better. When in 100-year storms, the pipes are of no use and would be under water in that event. They are sure they will improve the smaller storms and hope to get that water downstream quicker. There are other problems downstream that are factored into this Mud Creek floodplain.

Council Member Caraker asked if they can put a device on the head of the culvert to keep out trash and demand maintenance before it becomes a problem. Mr. Cox stated yes, they can design a metal bar-type system or grate that would prevent debris from getting into it. He stated as part of their engineering approval, they will have to sign maintenance agreements that they will maintain what they put in.

Council Member Caraker asked if there is parking lot on top of the concrete box. Mr. Cox stated it is a driveway to the right side of the store. Council Member Caraker asked if an access point will be put in the middle of the 300-foot concrete box. Mr. Cox stated yes, there will be manholes for access and maintenance every 100-150

feet. Council Member Caraker asked him to be proactive and keep large debris out of it than have to deal with it. Mr. Cox stated they would not want to stop small stuff but large debris.

Council Member Caraker asked where the 90-degree turn will be. Mr. Cox explained from Greenville Highway at their property, it takes a 90-degree turn before it gets to their pipe. Council Member Caraker asked if they are directing the flow with a concrete encasement. Mr. Cox stated they will have a large headwall with wings on it that will guide the water into the pipe.

Council Member Miller asked how many clean-outs they will have. Mr. Cox stated they typically do not go over 300 feet without one. In this situation, because of the volume of water that will be going through it, they will have an access point in the 100-150 feet range.

Mr. Barnett stated when a situation creates a flood and the creek gets completely full and the culvert cannot handle the water, they planned the road to carry the excess water. He asked where the water will go. Mr. Cox stated just as it does now, he designed the elevations to not be greater than they are now. He explained when it gets to their new box culvert, it will go up and over the same elevation, all the way down their driveway, and into the open area before the culvert begins under Highway 176. Mr. Barnett commented the culvert under Highway 176 is not large enough and asked where the water will go. Mr. Cox stated it will go over Highway 176 just like it does now. Mr. Cox explained they discussed it with NCDOT and can certainly do that again.

Council Member Miller asked where the water is going now. Mr. Barnett stated when the stream gets filled up, and the retention pond gets filled, it starts backing up down the stream along Copper Penny Street and in front of the Mexican restaurant and down Greenville Highway. He has watched it since 1970 and is not worried about the 100-year flood but the smaller floods. He sees the retention pond fill up up to four times per year. Council Member Miller explained the applicant is saying they will make the water move better by changing out the three culverts. Council Member Caraker commented eventually the water ends up on the City's property on the southside and flows out. Council Member Miller stated Mr. Barnett is concerned it will force more water into his area on Greenville Highway. Mr. Barnett stated they are losing the retention in the stream, 42 feet in width, 10 feet deep. He further stated that the retention pond in the parking lot will be lost because they are raising it and the water will back up.

Mr. Billings pointed out the retention area between the existing store and Spartanburg Highway and an area where the water will be displaced. He stated if there was nothing there now, with the current laws and regulations, this would never be developed but it is. It is private property. He stated one of the things they can do is to make it as safe as possible. Hendersonville's very strict floodplain ordinance states you have to do a no-rise in these areas and you have to build as safe as possible. The finished floor elevation of the new store and the parking lot is going to be elevated. And it will displace some amount of water. In the whole scheme of things, some water will be displaced. Mr. Barnett commented we do not have these type of projects come along often and this is an opportunity to improve the whole area if it is done right. He asked Council to consider requiring them to build a bigger, deeper retention pond and make it attractive.

Mayor Pro Tem Stephens asked Mr. Billings if this makes the flow of the water better. Mr. Billings replied yes. Mayor Pro Tem Stephens stated when the creek floods now, it goes across the highway and will continue to do that. Mr. Billings stated it does now. Mayor Pro Tem Stephens asked how it can impact Mr. Barnett's property more. Mr. Billings stated it depends on how large the storm is. He stated in the 100-year event, the water backs up. He stated if there is water over the back end of the culvert, the conveyance of the entire system is decreased. If the culvert is flowing freely, it will convey a lot of water. He stated during the smaller events, small summer thunderstorms, with the new concrete culvert in there, the water can go faster. He stated if it keeps raining it will continue going up and there could be debris but a tree limb can get caught now. He stated these improvements will help during the smaller events and it will have a positive impact. He stated this is still a floodplain and a floodway and there is no way to sugarcoat that. He stated they can do the best they can. He stated Hendersonville's flood ordinance is very strict, stricter than the State's model ordinance, so it went above and beyond the standards. The flood study was reviewed by Susan Frady and she sent it to Raleigh for review. He stated in the scheme of things, he believes Ingles has taken a situation that is not perfect and done the very best they could with it.

Council Member Smith asked if the redesigned parking lot will be higher than existing parking lot. Mr. Cox stated yes. Council Member Smith stated he understands Mr. Barnett's point if water is draining there now. He asked how they are planning to deal with the water. Mr. Cox stated the ordinance was written to make it better but the ordinance is also written that they have to set their finished floor elevation per the ordinance. They are setting their finished floor based on the City's ordinance which is requiring them to raise the finished floor, per the ordinance. They are raising the building approximately three feet but can't just raise the building. They are doing their best to take the parking lot down as quickly as possible but it is not easy to do that and meet the City's ordinance. Council Member Smith stated the reason the building and lot is being raised is because of the ordinance. Mr. Cox agreed stating he would not have raised it just to do that.

Council Member Caraker commented depending on a rain event, they cannot solve a massive problem but it will take longer to fail and get negative result with the bigger culvert. He stated water flows better on smooth surfaces. He stated they cannot guarantee it won't happen but it will take longer to happen.

Council Member Miller asked if they could put in a bigger pipe. Mr. Cox stated they could go back to NCDOT which is their limiting factor. He stated NCDOT was not willing to change their culvert two years ago when this was discussed. He can go back to them and see if they would be willing to. He stated it would be a major transportation project to dig Highway 176 and put in a new culvert. He stated their pipe is slightly larger than NCDOT's pipe. He stated it will be choked down again downstream at the railroad trestle. Council Member Miller stated this could be a project for the future. Mr. Cox stated they could make theirs slightly larger but they would need more elevation and height which would impact the 100-year floodplain.

Mayor Pro Tem Stephens commented that NCDOT could enlarge their culvert. Council Member Caraker stated they put in a size larger culvert than designed and it helped the flooding problem.

Mr. Billings explained during a 100-year event, there is so much volume in Mud Creek that it backs up. He stated the ordinance defines development, which is any kind of development even digging dirt out with a spoon, and that is what triggers a flood study. He stated they had to show with the existing conditions versus proposed conditions, that they do not increase the water surface elevation of a 100-year event more than 0.00 feet.

Council Member Smith asked if the parking lot comes back down to the grade it is now and what percentage of it is raised. Mr. Cox responded everything in the floodway, they kept at or below the levels that is there now. He stated as they get in the 100-year floodplain, they have to get back up to the doors of the store. As they get into the 100-year floodplain, they slope it back up to the right front door. Council Member Smith asked what percentage of the parking is above what it is now. Mr. Cox responded probably 50 percent will be higher than it is today.

Mayor Volk asked if anyone else wanted to present evidence in opposition to the project. The following spoke:

Gary Jones, owner of 609, 611 and 619 Spartanburg Highway, addressed the Council and provided the following testimony.

They purchased parcels in the subdivision, the Hendersonville Business Center, which was recorded in 1948 by Brownlow Jackson. The parcels they purchased in the subdivision was around the roadbeds and Copper Penny as everyone else did. He has all the deeds and transactions since 1948 and gave a history of the property. He stated the legal description changed from lots to metes and bounds, not lot numbers when Mr. Ingles purchased it and the surveyor is no longer a surveyor. The Ingles plan from 2011 showed the store over the roadbeds. He brought up the issue in the neighborhood compatibility meeting and they pulled that plan.

He stated they are trying to protect their investments.

He has had engineers work on the flooding issue. Ingles talked with him about buying his property for a deceleration lane but decided they didn't want to spend the extra money and will request variances on parking, etc.

He expressed concerns about the traffic impact analysis. He believes Ingles realizes those are roadbeds and changed their plan.

Mayor Volk asked Mr. Jones for his specific objections.

Mr. Jones opposed the reduction in parking referring to the Traffic Impact Analysis. He also opposed the 23-foot variance in the setback expressing concerns about the café and outdoor seating two feet from the end of Joel Wright Drive, cut-through traffic and the traffic associated with the night club. Also, he believes that Ingles does not own all of the property. Ingles is trying to put too large of a building on a small lot and is asking for large variances. Ingles is asking for parking, planting and curbing on top of their roadbeds. He is not against it.

Mayor Volk asked for questions. There was none. She asked if anyone else would like to speak and/or present evidence.

Mr. Ken Fitch, 1046 Patton Street, asked why the design is not site specific and why hasn't it been configured to avoid the issues that are troubling.

Ken Gordon, owns property on Chadwick Avenue, asked for a calculation on how much water the culvert is taking out of the usable area of Johnson's Ditch.

Mr. Cox stated most of the concern is the area between the two piping sections and what will happen with the proposed box culvert. They look at the whole floodplain and their whole site, there are constriction points that are a problem and the pipes are the problem. He understands it flows over and is not as good of a transition as if they had one complete length of pipe. He stated they will be accommodating some of that area within the box culvert but the actual flow characteristics of the creek will be improved.

Mayor Volk asked if anyone else wishes to speak in opposition or have questions. There was none.

Council Member Miller asked if Ingles has a plan in the event the lawsuit is settled in favor of the Jones'.

Dan Hicks, outside counsel for Ingles, stated that Ingles position is that Mr. Jones' position is without merit but in the event it is proven that he does the easements he claims he has, Ingles has relocated the building and situated it within the "horseshoe" such that he would have the rights that he is asserting that he has, as much or more so, than he has currently.

Council Member Miller asked if Mr. Jones is losing parking spaces or access. Mr. Hicks stated no.

Council Member Miller asked if there is any downside that the City should be aware of if it doesn't go in favor of Ingles. Mr. Hicks deferred to Sharon Alexander.

City Attorney Fritschner advised Ms. Alexander does not have to be sworn because she is making an argument of law.

Sharon Alexander advised the lawsuit has a very small set of legal and factual issues. It is their position that there is nothing that will be determined in that law suit that will have any impact on the plan that is before Council that will change Ingles ability to use any piece of this ground as proposed. She stated an easement cannot be overburdened. You can put things on an easement, you cannot unduly interfere with the easement owner's ability to use the easement for its intended purpose. That will always be the case if the plan is built as proposed.

Council Member Miller commented that nothing is lost. Ms. Alexander agreed. Council Member Miller stated he was concerned about the resolution. He asked if they had waited until this issue was resolved, and it goes in the other person's favor, could the same project be built on the site. Ms. Alexander responded yes, because there is no piece of the building on that side. She stated there is parking on those easements today. She stated it is her understanding of the law, and has argued before, is if there is an easement on a plat, the person who owns the dirt under the easement can still make use of that easement as long as it doesn't interfere with the ability to use that easement for its intended purpose. She explained if there is a 16-foot easement intended for vehicular traffic, and the purpose is one-way vehicular traffic, you might plant shrubs in the 16 feet as long as you can one lane of traffic through, the easement would not be unduly burdened. If the use of the property changes, that may change but that is not the case here. There will always be the ability for people to traverse the whole footprint of the alleged easements. That will not change regardless of what happens in Superior Court.

Council Member Miller asked if the easement is defined as a roadbed. Ms. Alexander stated it is shown on the recorded plat with name that end as street or road, but it has never been established on the ground as a roadbed but in this part it has been established as a parking area that people can drive through and do drive through, and can continue to do so.

Council Member Miller asked the City Attorney if this issue is settled to the contrary of Ingles, will they be able to put the building on the property. City Attorney Fritschner agreed with Ms. Alexander's assessment of the law that the owner of the underlying, the servient, may use their property in any way that does not unreasonably interfere with the dominant, or the easement that overruns it.

Council Member Miller asked if there is any barrier. City Attorney Fritschner stated he couldn't speak to the facts but only agreed with the assessment of the law.

Mr. Jones asked to answer that. Mayor Volk reminded Mr. Jones that Ms. Alexander made a legal argument. Mr. Jones stated he would answer it. City Attorney Fritschner advised it is up to the Mayor Volk as to whether to hear a legal argument from Mr. Jones. There was discussion of the legal proceedings. Mr. Jones stated the plan they are asking City Council to approve has parking, curbing and plantings on his roadbeds, right-of-way. He stated they keep saying servient and easements but this is not an easement on a deed, this is a platted, recorded alleyway, roadbed or right-of-way. The names were added, the City didn't have them as streets when Brownlow Jackson did this. These streets were for the use of the community. He stated they have a community and it is the lot owners. He stated they don't want the Council to allow them to take the right-of-way. Mr. Bob Ingle didn't do that, he only paved it and they do not mind that. He stated Bob Ingle, Jr. and this group want to build over it and they have stopped that. He stated now they want to put roadbeds and plantings on these and the property owners are saying no. He stated if Ingles is trying to get the City to commit to the project before the lawsuit so they can move ahead and that is not right. He stated his lawyer wouldn't come to argue the case here. He stated they are putting a fire lane on the property, a drive-through for the pharmacy, plantings and curbs on the roadbed and they do not have that right.

Mayor Volk asked if anyone else wants to speak on the issue.

Dan Hicks stated Ingles' position on these matters is that they own the entire site per deed. Ingles has not conceded anything with regard to the existence of easements, contrary to what was said earlier. There was a reference to the easement from the Sherman property and Ingles' belief is that those easements were for the benefit of the Sherman's Superette which was subsequently acquired by Ingles as a result of which those easements merged and were not available to be assigned to anyone.

Council Member Miller asked about the variance request for a two-foot setback and asked where the road comes in how the developer will deal with that. Mr. Cox clarified they are requesting 23 feet which includes the

sidewalk. Council Member Miller asked if Ingles is requesting a two-foot reduction or 23-foot reduction. Mr. Cox responded they are asking for two feet. He clarified from the setback line to their furthest building point is 17.17 feet which leaves them almost eight feet between the property line and the building. The outdoor seating area is by the right door.

Being no further questions, the public hearing was closed at 8:23 p.m.

Because he arrived after the beginning of the hearing, Council Member Smith made the statement that he read the memorandum that Ms. Anderson prepared. He asked Ms. Anderson if she said anything in the presentation before he arrived that included any matters of material fact that were different than the memorandum handed out before the meeting. Ms. Anderson stated no, not that she is aware of. Council Member Smith stated he is qualified to cast a vote.

The Council discussed the requests for the variances.

Variance request for parking: Council Member Caraker stated that is not a large issue. Mayor Pro Tem Stephens agreed stating those spaces are never full. Council Member Caraker stated the parking lot at the Highway 25 North is usually full because it has a smaller parking area but no gas pumps. Council Member Smith agreed stating they have designated employee parking.

Variance request for number of driveways: Three are proposed on Spartanburg highway instead of two. Council Member Smith stated traffic may get to the store in a number of directions. He stated it is different than the Ingles on Asheville Highway which can only be reached via Asheville Highway. He is no longer concerned about the ingress and is not opposed to allowing three driveways off Spartanburg Highway. There was discussion of the location of the entrances. Ms. Anderson stated one full access will be at the signalized intersection, another full access that exists now at the location of the Ingles sign, and a right-in only for the Gas Express. Mayor Pro Tem Stephens commented it appears to be an improvement to what is there. Council Member Miller asked if Council may grant variances on state roads. Council Member Caraker stated yes, and so far it has been fine. Council Member Smith commented he does not see the right-in lane backing up. He stated the design takes into account realistically what people do. He stated the gas entrance may be the least used and is a good way to deal with the Gas Express. Mayor Pro Tem Stephens agreed, because traffic is concentrated there.

Council Member Miller commented on the distance between entrances and expressed a concern about setting a precedent, wants to ensure it right-in only because there is no deceleration lane. Council Member Smith commented this is a different issue that the proposal on Asheville Highway and this location has other access points from other properties.

Variance request to increase the maximum number of driveways a development parcel may have from three to five: Council Member Caraker commented this is special use and would only apply only to this project. He stated two of the entrances are existing.

Setback variance: Council Member Smith commented the curb of the sidewalk will be encroaching, not the wall of the building. He stated the two feet is from the road to the edge of the curb on the sidewalk; then another eight feet to the actual wall of the building. He stated it is encroaching in the setback but the building will not be built two feet away. Council Member Miller asked if the Council should take the comment that it is not true. Mayor Volk reopened the hearing at 8:35 p.m. for clarification purposes. Ms. Anderson showed where Joel Wright Drive extends in and is also Ingles property boundary. Ingles wants to have the corner of their building encroach into the 25-foot setback. The setback is for the building. Mr. Cox provided a plan showing the actual measurement from the setback line, the property line, the edge of the sidewalk. He stated from the line to the closest point of the building is 17.71 feet.

Mayor Volk asked for further questions. There was none. The public hearing was closed at 8:37 p.m.

Mayor Volk asked for any comments regarding the rezoning. There was none.

Council Member Smith commented the laws have created a unique situation because the property must be raised so it doesn't get flooded, 50 percent of the parking lot must be raised, and it seems the laws are working against themselves. He stated he hopes it doesn't create a problem in the future but a development in the floodplain is being raised. He stated the developers are doing what is being asked of them but it creates another situation. Council Member Miller stated they appear to be exceeding what is asked and Council has to depend on experts that verify the information. Mayor Volk commented if we knew then what we know now, the property would never have been developed - but it has been and now Council has to determine the highest and best use with the least amount of impact.

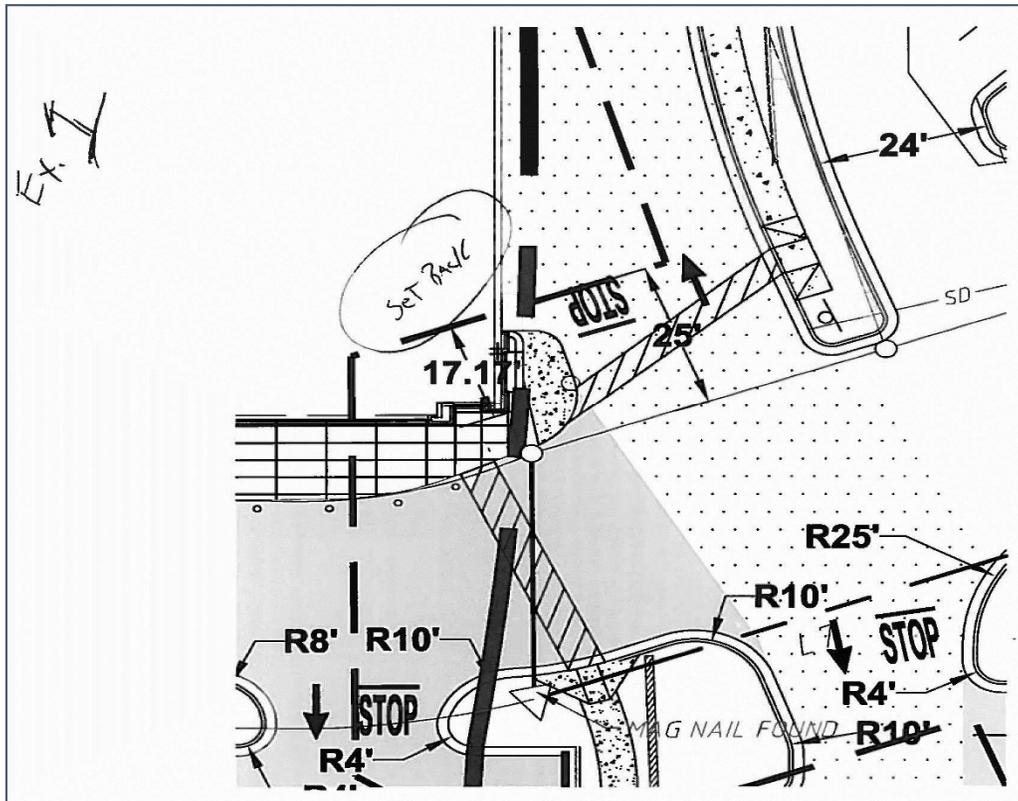
Variance Request #1: Council Member Caraker moved City Council to approve a variance from Zoning Ordinance Table 6-5-2, reducing the number of required parking spaces from 360 to 237 because he thinks the numbers in the ordinance may be extreme. A unanimous vote of the Council followed. Motion carried.

Variance Request #2a: Council Member Caraker moved City Council to approve a variance from Zoning Ordinance Section 5-18-4.3 Driveways, increasing the number of driveways a development parcel may have

on any road from two to three because in this case it makes sense for traffic flow. A unanimous vote of the Council followed. Motion carried.

Variance Request #2b: Council Member Smith moved City Council to approve a variance from Zoning Ordinance Section 5-18-4.3 Driveways, increasing the maximum number of driveways a development parcel may have from three to five. A unanimous vote of the Council followed. Motion carried.

Variance Request #3: Council Member Smith moved City Council to approve a variance from Zoning Ordinance Section 5-15-4.1 Setbacks, allowing approximately 333 square feet into the northwest corner of the building to encroach in accordance with Exhibit 1 as entered into the record of this proceeding. A unanimous vote of the Council followed. Motion carried.



Special Use Permit and Rezoning: Council Member Caraker moved City Council to adopt an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of parcel numbers 9568-94-0252, 9568-83-9870, 9568-94-0455, 9568-83-9764 and an approximate .23 acre portion of 9568-84-7009 from C-3 Highway Business to PCD Planned Commercial Development, as shown on Exhibit A, finding that the rezoning is consistent with the Comprehensive Plan, the rezoning is reasonable and in the public interest for the following reasons: it will renovate a corner of this intersection.

He further moved City Council to approve the application of Ingles Markets 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. A unanimous vote of the Council followed. Motion carried.

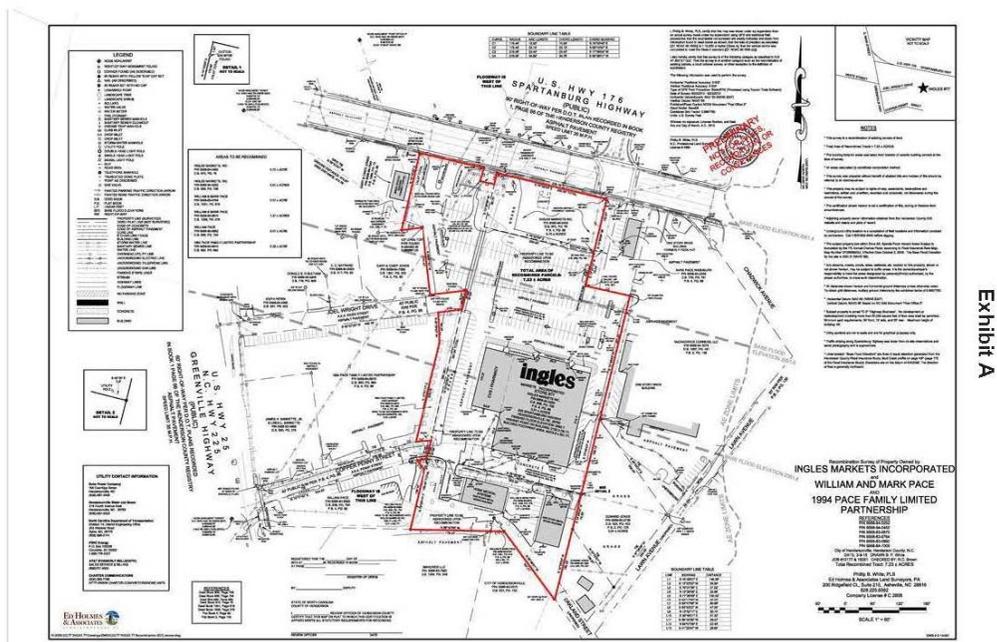


Exhibit A

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

IN RE: Ingles # 77; (File # P15-8-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 # 9568-94-0252 from C-3 Highway Business to PCD Planned Commercial Development;

Rezone Parcel # 9568-83-9870 from C-3 Highway Business to PCD Planned Commercial Development;

Rezone Parcel # 9568-94-0455 from C-3 Highway Business to PCD Planned Commercial Development;

Rezone Parcel # 9568-83-9764 from C-3 Highway Business to PCD Planned Commercial Development;

Rezone an approximate .23 acre of Parcel # 9568-84-7009 as shown on Exhibit A from C-3 Highway Business to PCD Planned Commercial Development.

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

Adopted this seventh day of May 2015.

/s/Barbara G. Volk, Mayor

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

Approved as to form: /s/Samuel H. Fritschner

There was a five-minute recess.

9. Quasi-Judicial Public Hearing – Consideration of an Application from Flatiron Partners for a Special Use Permit for the Development of 80 Multi-Family Residential Units Known as Cedar Terrace on 10 acres Located Adjacent to Francis Road, Lakewood Road and Highlands Square Drive and to Rezone the site from I-1 Industrial to PRD Planned Residential Development:

Mayor Volk explained the procedures for quasi-judicial public hearing stating they are required by the State of North Carolina in certain situations. Quasi-judicial hearings differ from regular public hearings in that interested persons have the following rights: to cross examine witnesses, to present evidence, to inspect documentary evidence presented against them, and to be afforded all the procedural steps set out in the pertinent ordinance and statute.

Mayor Volk explained the City Council may only consider factual information and/or expert testimony and not feelings or opinions. She asked those who anticipate speaking to be sworn in. Five persons were sworn in to provide testimony.

At 8:55 p.m., Mayor Volk opened the public hearing in accordance in North Carolina General Statutes by notice published in the Hendersonville Lightning.

Mayor Volk asked the members of City Council to announce any contacts concerning the application that are not included in the file. There was none.

Mayor Volk asked the members of City Council to announce any conflicts of interest they may have pertaining to this matter. There was none.

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

Ms. Anderson, Planning Director, requested the Council enter into the record file #P-15-5-SUR and requested the Council to take official notice of the Zoning Ordinance, the official zoning map, the 2030 Comprehensive Plan and the Comprehensive Transportation Plan. She provided the following testimony:

The City is in receipt of a Special Use Permit application from Hollis Fitch of Flatiron Partners for the development of 80 multi-family residential units on ten acres. The project is proposed on a portion of parcel number 9579-29-5777. The proposed parcel will have frontage on Francis Road, Lakewood Road and Highlands Square Drive. The density for this project is 7.54 units per acre. The applicant is also requesting to rezone a portion of this parcel from I-1 Industrial to PRD Planned Residential Development.

This application is for special use review. The preliminary site plan is subject to recommendation by the Planning Board and approval by City Council. The final site plan is subject to City staff approval.

She reviewed a drawing showing the location of Allen Branch.

Existing Land Use & Zoning: Parcel number 9579-29-5777 is currently zoned I-1 Industrial and is vacant. The parcel to the north across Highlands Square Drive is zoned PCD Planned Commercial Development and includes

Sam's Club. The parcel located to the east is zoned PRD Planned Residential Development and includes the Cedar Bluff Apartments with 64 units. Parcels to the south across Francis Road are zoned C-2 Secondary Business and include residential uses.

Comprehensive Plan Consistency: The parcel included in this application and parcels located to the north, east and south are classified as Regional Activity Center on the 2030 Comprehensive Plan's Future Land Use Map. The goal of the Regional Activity Center classification is to "meet the large-scale retail needs of Hendersonville residents while encouraging mixed-use, walkable design through redevelopment and infill projects." The parcel located to the west is classified as Business Center and Natural Resource/Agricultural. The goal of the Business Center classification is to "create an employment corridor along I-26 that supports the growth of Hendersonville as a business destination and to create a campus like mixed-use environment that includes office, research and low-impact industrial uses, as well as supportive retail amenities." The goal of the Natural Resource/Agricultural classification, which follows the creek, is to "create an interconnected network of green infrastructure that preserves environmentally sensitive areas, protects water resources through low-impact stormwater management, provides floodwater storage, provides community open space and recreational opportunities, and preserves agricultural resources."

The Regional Activity Center lists multi-family residential as a secondary use. The Comprehensive Plan recommends that secondary uses such as this one may be permitted through the planned development and special use procedures. This project is a planned development and is being processed through the special use permit procedures.

Plan Review:

Buildings: The site plan includes the following:

- Five two story multi-family buildings with a total of 80 units
- A 2,091 square foot community building
- Common areas including a playground and gazebo.

She provided elevation drawings of the project.

Parking: The site plan shows 160 parking spaces for the proposed multi-family residential development. The minimum required by the Zoning Ordinance based on number of bedrooms is 132.

Stream: Allen Branch runs within the property boundary along Highlands Square Drive. Adjacent to and to the west of Allen Branch is a steep bank that rises approximately 30 feet. The site plan does show the required 30-foot stream buffer and 20-foot transition zone as measured from the top of the bank.

Greenway: When the Wal-Mart project was approved by City Council in 2000, a condition was placed on that project that stated "dedication of a thirty-foot right-of-way along Allen Branch for the purpose of developing a public greenway." Staff has added a condition to this Special Use request for an easement for the continuation of that greenway alignment and the site plan has a note stating "greenway easement for continuation of greenway easement by Wal-Mart along Allen Branch."

Stormwater: The applicant will be providing stormwater management plans to the Engineering Department as part of the final site plan submittal.

Analysis: She reviewed the required findings contained in Section 7-4-10.1 of the Zoning Ordinance and provided the following response:

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

B) Water and sewer are available to the site.

C) 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 February 13, 2015. 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.

Approximately seven people representing the general public attended the meeting. The public raised concerns about the traffic and trucks on Francis Road, driveway location, criminal activity in the area, income level of tenants, property maintenance, site lighting and construction time-frame. She provided a copy of the neighborhood compatibility report.

E) The 2030 Comprehensive Plan's Regional Activity Center classification is intended to "meet the large-scale retail needs of Hendersonville residents while encouraging mixed-use, walkable design through redevelopment and infill projects."

The Regional Activity Center lists multi-family residential as a secondary use. The Comprehensive Plan recommends that secondary uses such as this one may be permitted through the planned development and special use procedures. This project is a planned development and is being processed through the special use permit procedures. Therefore, this proposed development is consistent with the 2030 Comprehensive Plan's Land Use and Development recommendations.

The Comprehensive Transportation Plan does not indicate any improvements to Francis Road or Lakewood Road. Highlands Square Drive is a private road and is not included in the Comprehensive Transportation Plan. She noted Francis Road is controlled by NCDOT. There is a small portion of Francis Road that the City maintains that leads off Highway 64 to the Bonworth property. The remainder of the road is maintained by NCDOT. Lakewood Road is also controlled by NCDOT. The applicant is required to get driveway permits from NCDOT.

Tree Board: The Tree Board met on April 7 to review this project and did not have recommendations or additional comments for the project.

Planning Board: The Planning Board took this matter up at its regular meeting of March 9, 2015. The Planning Board voted unanimously to recommend City Council adopt an ordinance amending the official zoning map of the City changing the zoning designation of a portion of the aforementioned parcel from I-1 Industrial to PRD Planned Residential Development, finding that the rezoning is consistent with the Comprehensive Plan, the rezoning is reasonable and in the public interest to provide more affordable housing.

The Planning Board also voted unanimously to recommend City Council approve the application of Flatiron Partners 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.

Ms. Anderson reviewed the suggested motions. There were no questions of Ms. Anderson.

Charles Irick, Principal with Flatiron Partners, provided an artist rendering of the proposed project, Cedar Terrace. He provided the following testimony: They will have five two-story buildings and a clubhouse, roughly 2,000 square feet units. He reviewed the location of the site and the site plan. The site plan changed after they met with the neighbors. Originally, the entrance was off Francis Drive but the neighbors had concerns about cars coming and going at night and their lights shining onto their property. They changed the entrance to Lakewood Drive. Their plan shows the 50-foot stream buffer. They will submit a landscape plan that will have seasonal flowers and plants that are natural to this area, planted strategically to act as a natural buffer. He provided a photo as an example of a construction entrance rock mat. At the neighborhood meeting there was a concern about construction trucks leaving mud on the roads. They will use this practice to keep the mud on the site during construction. He noted there was some concern about the traffic that a project like this could create. They were not required to have a traffic study done but they did. The study found this project will have a very minimal impact on traffic and wear and tear on the local roads.

Amenities on site include: a picnic area, a playground, the project will be Energy Star certified, and a security system that will include cameras on the project. He stated security system camera feeds can be uploaded to the internet and the website will be available to the local Police Department so they can log on and be able to monitor anything they need to at any time.

The clubhouse will have a business center with a computer lab. All units will be wired for high-speed internet. They will have on-site laundry facilities and each unit will have washer/dryer connections. They will have a fitness center and a community building with community space.

He provided photos of previous projects in Greenville, SC (same architect and same general contractor will be used for this project), Brevard, NC, Easley, SC and Franklin, NC.

He asked for questions from the Council.

Council Member Miller asked how long construction will take. Mr. Irick responded ten to 12 months. They plan to start construction sometime in the first quarter of 2016. Council Member Miller asked if local people are hired. Mr. Irick stated yes, they encourage their general contractor to seek local subcontractors and employees.

For the record, Mr. John Connet, City Manager, entered a message into the record from Andrew Tate, Henderson County Partnership for Economic Development, who could not attend, but stated the Partnership reviewed the project and appreciated the opportunity to engage in matters that impact industrial zoning designation. They do not object to the rezoning because they believe it is a suitable use for the land based on traffic and road conditions. They do not object to the project.

Mayor Volk asked if anyone else wanted to speak in favor of the project. There was none. She asked if anyone wanted to speak in opposition to the project. There was none. She asked if anyone has questions. There was none. The public hearing was closed at 9:11 p.m.

***Special Use Permit and Rezoning:* Council Member Caraker moved City Council to adopt an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of a portion of parcel number 9579-29-5777 from I-1 Industrial to PRD Planned Residential Development, finding that the rezoning is consistent with the Comprehensive Plan, the rezoning is reasonable and in the public interest because it fills an affordable housing need. He further moved City Council to approve the application of Flatiron Partners 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. A unanimous vote of the Council followed. Motion carried.

Ordinance #15-0517

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

IN RE: Cedar Terrace
(File # P15-5-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:

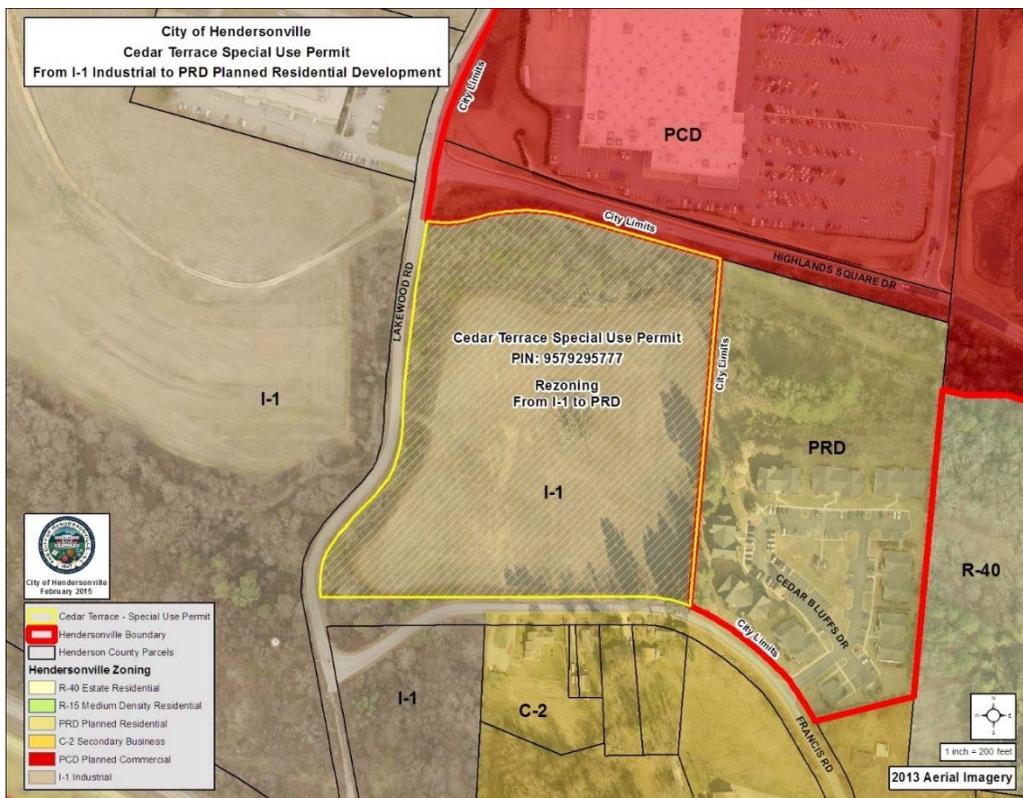
Rezone a portion of Parcel # 9579-29-5777, as shown in Exhibit A, from I-1 Industrial to PRD Planned Residential Development.
2. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this seventh day of May 2015.

/s/Barbara G. Volk, Mayor

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

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



10. Public Hearing – Consideration of an Application from the City of Hendersonville for an Amendment of Zoning Ordinance Article VII Development Review, Pertaining to the Planning Board: Planning Director Sue Anderson explained based on comments from the Business Advisory Committee, a number of staff members have met with City Manager John Connet to discuss possible revisions to the Zoning Ordinance and other City regulations in order to streamline the City permitting process.

Ms. Anderson explained staff originally looked at modifying both the site plan review process and the Special Use review process. She reported the Planning Board reviewed the proposed text amendments at their March meeting and after some discussion regarding the Business Advisory Committee and limiting public input, Mr. Connet suggested the Planning Board meet with the Business Advisory Committee to further discuss these changes.

Ms. Anderson reviewed the current requirements and the proposed amendments for site plan review and special use review.

Site Plan Review proposed amendment: The proposed change is to increase the minimum square footage of projects subject to Planning Board review from 10,000 square feet to 20,000 square feet or greater in floor area. With this change, any commercial, industrial or institutional development that is less than 20,000 square feet in area is subject to staff review and approval only and is not subject to the public notice requirements eliminating Planning Board review and approval for these smaller projects and potentially result in a quicker turn-around time for approval.

Special Use Review: Currently, the Planning Board reviews and gives recommendations to the City Council on all Special Use Review projects which include a site-specific plan accompanied by a rezoning request. The Special Use Review process involves a Neighborhood Compatibility meeting, Planning Board review and recommendation and a public hearing before City Council. Staff considered removing the Planning Board

review process and having the Special Use Review include only a Neighborhood Compatibility meeting and a public hearing with City Council. However, NCGS 160A-387 requires that once zoning is established, all proposed amendments to the zoning ordinance or zoning map must be submitted to the planning board for review and comment. Therefore, for Special Use Review, the Planning Board is required to review, at a minimum, the rezoning request.

Ms. Anderson reported the Business Advisory Committee met with four members of the Planning Board. There was consensus that the threshold for Planning Board review on site plans be changed from 10,000+ square feet to 20,000+ square feet. Additionally, in order to preserve public notice of these projects, it was agreed that commercial and industrial projects between 10,000 and 20,000 square feet will have a public notice posted at the site once staff has approved these projects so the public is informed. City staff will be responsible for posting these notices.

Regarding establishing a Technical Review Committee, Ms. Anderson reported it was agreed upon that a meeting with the Technical Review Committee should be conducted within two weeks unless the applicant/developer requests a different time frame. The Technical Review Committee may be established either as a policy that staff follows or can be added to the Zoning Ordinance. The text amendment below does not include language to add that committee to the Zoning Ordinance but that may be brought back to the Council for consideration.

Ms. Anderson reported the Text and Policy Committee is made up of four members of the Planning Board but due to the nature of these amendments, staff felt it prudent to include the entire Planning Board.

Ms. Anderson reviewed the suggested text amendments of Section 7-3-1 Applications, for clarification purposes, increasing the threshold for staff review up to 20,000 square feet. She also proposed adding a provision whereby the property is posted with information about the project, the decision and will contain contact information, and remain on the property for 30 days.

Ms. Anderson reported the Planning Board voted unanimously to recommend City Council adopt an ordinance to amend the Zoning Ordinance to streamline the approval process.

The Council discussed how these amendments will speed up the approval process for small projects.

Mayor Volk opened the public hearing at 9:22 p.m. in accordance with North Carolina General Statutes by notice published in the Hendersonville Lightning. The following addressed the Council:

Ken Fitch, 1046 Patton Street, stated recent actions to coordinate the permitted process with Henderson County have represented a beneficial streamlining of the process but while it may expedite the process, he expressed areas of concern:

- possible issues for neighboring residents and businesses for big box store development and having a provision for public input and review
- lack of public awareness and their involvement in the process, i.e., on-site notification after approval, and the lack of opportunity for civic involvement: the done-deal aspects contributes to public cynicism.
- This text amendment is intended for the long-term, in perpetuity, and cautioned against the oversight of possible inexperienced staff without citizen or Planning Board input and review. A mechanism for citizen review before approval would provide an opportunity to raise issues and make adjustments before implementation.

No one else expressed a desire to speak. The public hearing was closed at 9:30 p.m.

The Council discussed the current process, the public noticing aspect, and public input before project approval. The Council also discussed development by right in accordance with zoning regulations. In discussion, the Council agreed they would like to see the signs posted on the property before approval to allow the public to speak and ask questions and to serve as notification of adjoining property owners. There was some discussion about the number of days allowed for public comment/questions.

Ms. Anderson explained currently, projects under 10,000 square feet are subject to staff review/approval and there are no noticing requirements. Such projects are generally permitted by right. She explained the amendment would change that number to any project under 20,000 square feet and generally impacts commercial development.

Mayor Volk voiced support of the public having notice before approval and have an opportunity to speak.

There was discussion of the amount of time the amendments would save. Ms. Anderson stated the project must be submitted 30 days prior to the Planning Board for consideration. The Council agreed to post the property as soon as possible when a project is submitted.

Mr. Connet commented this is one simple way to streamline one process for projects approved by right. The process to determine zoning has already been done, permitted uses have been identified, the requirements have been reviewed, districts established, etc. He explained there was a change in state law that allows appeals. Mrs. Frady explained the law requires developers to post their property or the approval may be contested. If a developer begins building without posting the property, neighbors have a right for 30 days to appeal the approval. This encourages developers to post the property so neighbors are aware of the development. Council Member

Miller suggested the City require the posting of property. City Attorney Fritschner advised the Council of preemption doctrine and stated the City may make the requirements stricter, but it cannot say the same thing. Discussion followed on the State law. Mrs. Frady explained the State law puts the onus on the developer to notify the public what they or doing, but if not, they have the right to appeal the development within 30 days.

The Council asked staff to review the ordinance and bring it back to the Council for consideration. Modifications should include posting the property within ten days of receipt of an application, for projects between 10,000 square feet to 19,999, with contact information, to ask questions/provide input before an application is approved.

Council Member Smith moved to continue this discussion to the June 4 Council meeting. A unanimous vote of the Council followed. Motion carried. No action was taken by the Council.

11. Consideration of Bee City USA Resolution: Tree Board Chair Mac Brackett addressed the Council stating this is a joint project between the Tree Board and the Environmental Sustainability Board. He stated the Henderson County Board of Commissioners have expressed support of this effort.

Ms. Kim Bailey, member of the Environmental Sustainability Board, provided a presentation and explained their goal is to promote healthy habitats for pollinators not only to maintain a diverse urban and suburban landscape but because they are important partners in producing much of our food supply. It has been said one in every three bites of food we eat is courtesy of insect pollination. Out of the 115 crops studied, 87 depend to some degree upon animal pollination, accounting for one-third of crop production globally. Of those crops, 13 are entirely reliant upon animal pollinators, 30 are greatly dependent and 27 are moderately dependent. The crops that did not rely upon animal pollination were mainly staple crops such as wheat, corn and rice. She explained there is a lot we can do to support pollinators. She stated there are already many partners in Henderson County working to promote habitat plantings for pollinators.

Ms. Bailey reviewed the standards a Bee City USA designee must adopt.

- 1) *Establish and/or maintain, a subcommittee of the municipality's Sustainability Commission, or Tree Commission, or appropriate body or department comprised of citizens and staffed by municipal employees charged with assembling and disseminating information to municipal departments, residents, businesses, and developers on topics of pollinator-friendly habitat and policies.* The City has already established the Tree Board that coordinates the Tree City USA program and have agreed to take on Bee City.
- 2) *Pass and/or maintain, an ordinance to encourage responsible beekeeping in municipal limits on public and private property, for new and existing commercial and residential developments.*
- 3) *Pass a Bee City USA resolution.*
- 4) *Commit to install at least one authorized Bee City USA street sign in a prominent location and create a Bee City USA webpage on your website to link to the Bee City USA website, explain what designation as a Bee City USA entails, list your municipality's Bee City USA contacts, and to report the activities you have undertaken to make your municipality pollinator-friendly.* They would like to post a Bee City sign eventually everywhere there is a Tree City sign.
- 5) *Commit to annually observe National Pollinator Week (third full week of June) or some other appropriate occasion through events, proclamations, and promotions that showcase pollinator-friendly farms and nurseries, beekeepers and their products, and the municipality's commitment to being a BEE CITY USA.*
- 6) *Commit to annually apply for renewal of the municipality's designation and submit a report of BEE CITY USA activities following the format provided.*

Ms. Bailey stated if approved, the City of Hendersonville will become the seventh Bee City. If approved, this will be submitted as part of the "America in Bloom" award application. Mayor Pro Tem Stephens suggested seeking donations for the signs.

Council Member Smith moved the Council to adopt the Resolution Designating the City of Hendersonville, NC as a Bee City USA. A unanimous vote of the Council followed. Motion carried.

Resolution #15-0518

RESOLUTION DESIGNATING THE CITY OF HENDERSONVILLE, NC A BEE CITY USA®

WHEREAS, the goal of BEE CITY USA is to promote healthy, sustainable habitats and communities for bees and other pollinators; and

WHEREAS, thanks to the tremendous diversity of wild native bees, along with the honey bees that were brought here from Europe in the 1700s, we have very diverse dietary choices rich in fruits, nuts and vegetables: "One in every three bites of food we eat is courtesy of insect pollination. Even our meat and milk trace back to insects that pollinate the alfalfa and other feed for beef cattle and cows" (Mace Vaughan, Pollinator Program Director for the Xerces Society for Invertebrate Conservation); and

WHEREAS, bees and other pollinators around the globe have experienced dramatic declines due to a combination of habitat loss, use of pesticides, and the spread of pests and diseases, with grave implications for the future health of flora and fauna; and

WHEREAS, cities and their residents have the opportunity to support bees and other pollinators on both public and private land; and

WHEREAS, supporting pollinators fosters environmental awareness and sustainability, and increases interactions among community stewards such as commercial and backyard beekeepers, farmers, children, educators, Master Naturalists, Master Gardeners, plant nurseries, municipalities, neighborhoods, and garden suppliers and clubs; and

WHEREAS, the economic benefits of (native and honey) bee-friendliness are:

- Healthy ecosystems--insect pollinators are required for pollination and reproduction of about 85% of flowering plants globally, plants that: 1) are vital for clean air and water; 2) provide food, fiber and shelter for people and wildlife; and 3) support the very insects that pollinate our crops and form the basis of food webs.
- Increased vegetable and fruit crop yields due to bee pollination.
- Increased habitat for natural enemies of crop pests and therefore reduced need for and costs associated with pesticides.
- Increased demand for pollinator-friendly plant materials from local nurseries and growers.
- Income earned by beekeepers and others through the sale of bee products, beekeeping equipment and supplies, and hive rentals for pollination; and, heightened prestige and premium asking prices for place-based honey, which enhances the visibility and reputation of its community of origin; and

WHEREAS, HENDERSONVILLE, NC should be certified a BEE CITY USA community because:

- The City of Hendersonville is committed to preserving natural resources. In support of this goal, the Hendersonville Tree Board educates the public about the economic, environmental, and aesthetic benefits of trees and shrubs. Hendersonville has been recognized as a Tree City USA for 24 years and is one of only 11 Sterling Tree Communities out of 78 total certified Tree City USA communities in the state. Sterling Communities are regarded as leaders in community forestry and are often looked upon as innovators. In addition, the Hendersonville Environmental Sustainability Board encourages local collaboration on projects that promote environmental education and sustainable practices including conserving and creating habitats for pollinators.
- In order to strengthen and support the vitality and productivity of local flora with the help of pollinators, the City of Hendersonville's Oklawaha Greenway landscape plan has been designed to include plantings of approximately 500 native trees and 1.3 acres of flowering mix meadows.
- The City of Hendersonville's participation in the America in Bloom program promotes beautification through education and community involvement. Pollinator friendly plantings by municipal, commercial, community, and residential sectors also supports Hendersonville's annual America in Bloom award application through urban tree plantings, environmental sustainability efforts, and the use of native plants in landscaped areas.
- Historic Hendersonville is the official home of the North Carolina Apple Festival, a four-day celebration founded in 1947 to honor the North Carolina Apple; Garden Jubilee, one of the most spectacular and largest gardening shows in the Western North Carolina; and Farm City Day, an affair begun in 1955 to highlight the dependency of farm people and city people on each other for products and services essential to modern living. These annual events provide abundant opportunities to teach both residents and visitors how they can help make the world safer for pollinators.
- Home to approximately 150 apple growers and 5000+ acres of apple trees, Henderson County is the largest apple-producing county in North Carolina and grows over 85 percent of the apples in the state. A continued productive apple harvest is dependent on healthy populations of bees.
- The Henderson County Beekeepers Association meets monthly to promote improved beekeeping management methods among beekeepers. The Association also offers an annual beginners' bee school where the fundamentals of beekeeping are taught.
- A partnership between Henderson County Education Foundation and Henderson County Public schools, Historic Johnson Farm educates the children of Henderson County about rural Appalachian life at the turn of the 20th century. Bee hive demonstrations are included in field trips and summer camp experiences. Throughout the Farm's 15-acre landscape, a volunteer gardening crew also maintains gardens that provide diverse flora to support the hives.
- A partnership of NC Cooperative Extension, Henderson County Education Foundation, and Henderson County Public Schools, Bullington Gardens maintains a diversity of flora in its gardens and natural areas and a specific pollinator garden to host butterflies and other pollinators. Educational programs highlighting the essential role of pollinators in our ecosystem and in crop production are offered to elementary school children.
- North Carolina Cooperative Extension and the Extension Master Gardener Volunteers (EMGVs) of Henderson County work collaboratively to provide research-based, unbiased information to educate the public about proper selection, placement, and maintenance of plants to support pollinators. The EMGVs also maintain educational gardens at the Flat Rock Playhouse and the Bountiful Harvest Community Garden in Jackson Park which include many pollinator friendly plants.
- Carolina Mountain Land Conservancy has invested substantial time and resources partnering with the Hendersonville Tree Board and Bee City USA to encourage the planting of native flowering species and the eradication of non-native species that crowd out our native nectar sources.
- Henderson County currently has 11 habitats certified as Monarch Waystations by the University of Kansas Monarch Watch program. These habitats, located at home gardens, schools, businesses, nonprofit organizations, faith-based organizations and on public lands, provide milkweed host plants essential for monarch reproduction plus nectar sources to sustain adult butterflies and other pollinators. In addition, two Henderson County landowners have been selected by the Pollinator Partnership to participate in the inaugural U.S. Bee Buffer Project. This initiative, sponsored by the Burt's Bees® Greater Good Foundation, creates foraging habitat of pollen and nectar sources in agricultural areas.

WHEREAS, ideal pollinator-friendly habitat:

- Provides diverse and abundant nectar and pollen from plants blooming in succession.
- Provides clean water for drinking, nest-building, cooling, diluting stored honey, and butterfly puddling.
- Is pesticide-free or has pesticide use carried out with least ill effects on pollinators.
- Is comprised of mostly, if not all, native species of annual and perennial wildflowers, shrubs, trees, and grasses because many native pollinators prefer or depend on the native plants with which they co-evolved.
- Includes, where possible, designated pollinator zones in public spaces with signage to educate the public and build awareness.
- Provides for safe and humane removal of bees when required.

- Provides undisturbed spaces (leaf and brush piles, un-mowed fields or field margins, fallen trees and other dead wood) for nesting and overwintering for native pollinators; and

WHEREAS, in order to enhance understanding among municipal staff and the public about the vital role that pollinators play and what each of us can do to sustain them, HENDERSONVILLE, NC agrees to meet the following commitments required of all BEE CITY USA communities:

- 1) Pass this BEE CITY USA resolution (which articulates these commitments).
- 2) Designate a municipal department as the municipality's Bee City USA sponsor and an employee from that department as the Bee City USA "liaison;" and assign facilitation of the local Bee City USA program either to a) a new or existing city commission or b) a non-profit organization, to encourage and coordinate local pollinator habitat and awareness activities. This body will serve as the intermediary between the citizenry and the municipality on matters of enhancing pollinator awareness, health and habitat, fulfilling the following commitments:
 - Annually celebrate National Pollinator Week (third full week of June) or some other appropriate occasion with educational events, pollinator habitat plantings or restoration, proclamations or promotions that showcase the municipality's commitment to enhancing pollinator health and habitat.
 - Annually apply for renewal of the community's designation and submit a report of the previous year's BEE CITY USA activities following the format provided.
- 3) Publicly acknowledge the community's commitment by agreeing to a) install/maintain at least one authorized BEE CITY USA street sign in a prominent location, and b) create/maintain links on appropriate pages of the municipal website which includes, at minimum, links to a PDF of this signed Resolution and the national BEE CITY USA website, contact information for the municipality's BEE CITY USA liaison and designated "facilitator commission or non-profit organization committee," and reports of the pollinator-friendly activities the municipality has accomplished the previous year(s).

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

The HENDERSONVILLE CITY COUNCIL accepts the designation and commits to the standards of BEE CITY USA.

Read, approved, and adopted this seventh day of May 2015.

/s/Barbara G. Volk, Mayor

Attest: Tammie K. Drake, MMC, City Clerk

Approved as to form: /s/Samuel H. Fritschner

12. Update/Discussion on Parking Study Recommendations: City Manager John Connet provided an update on the parking study recommendations and implementation. There are three categories of recommendations: customer service, enforcement, and infrastructure.

Mr. Connet stated the report recommends: enhance parking enforcement and customer service through an ambassador program, consider increasing fines for abusers, improve customer service support to help parking enforcement officers, improve the parking permit program, improve parking lots with new kiosks, lighting and signage, and post the parking rules on city maps and the website in plain language so citizens and visitors know the rules.

Mr. Connet reported a public meeting was held on April 6 to distribute the information. Key themes from the meeting were more parking enforcement and concerns about losing 24/7 reserved parking spaces. He stated he has been observing the leased lots and has found there continue to be a number of open spaces even though they are leased.

Implementation Plan: Mr. Connet stated staff will be recommending:

- implementing a Parking Ambassador Program beginning on July 1, 2015,
- increasing parking fees to encourage compliance and fund enhancements,
- increasing parking meter fees from \$0.25 per ½ hour to \$0.50 per ½ hour,
- increasing overtime/expired meter (parking ticket) from \$10 to \$25 with subsequent overtime \$50 that doubles each overtime, and
- increasing penalties for late payment from \$25 (15 days) and \$50 (30 days).

Customer Service: Mr. Connet stated staff is recommending transitioning parking ticket collection to the Finance Department. This will give the Parking Enforcement Officer more time for enforcement and customer service and will allow more collection options including online payments, paying by credit card, and provide longer office hours in a secure location to avoid the confrontational opportunity that exists now. The parking rules will be placed on the website and downtown maps in plain language. Council Member Miller requested a warning the first time to educate the public about the parking regulations. **The Council agreed by general consensus.**

Infrastructure: Mr. Connet recommended upgrading from parking meters to kiosks in all parking lots. The kiosks will provide payment and length-of-stay flexibility to parking patrons. He also suggested possibly adding the option of paying parking tickets and monthly permits at the kiosk which will provide easier collection and enforcement for staff. These kiosks, new signage and lighting, will improve the appearance of all parking lots. The first kiosk will be installed at the Maple Lot on Fifth Avenue.

Leased Parking: Mr. Connet recommended moving forward with shared parking agreements and continue working with the Tourism Development Authority on the wayfinding program. Council Member Miller clarified the City is not eliminating leased spaces at this point. Mr. Connet agreed. He recommended beginning a trial period with a number of metered spaces in the Dogwood lot that are currently under-utilized for those 15 people on a waiting list with an “S” permit, at \$10/month, and make no changes to the existing “legacy” permit holders.

Mr. Connet explained once enforcement begins, the results on the lots will be evaluated. The City will also survey the “legacy” parking tenants to determine the amount for the convenience of having 24/7 parking available. He stated the City will also develop a comprehensive lease agreement with a specific term, to allow the use of underutilized spaces for special events, and it will lay out rights and responsibilities.

There was discussion of the renovated Maple lot and the flow of traffic.

The Council expressed no objection to the implementation plan as proposed by the City Manager. No formal action was taken.

13. Discussion of Tethering Ordinance: Removed from the Agenda

14. Update on Seventh Avenue Municipal Services District (MSD) Expansion: City Manager John Connet proposed a public hearing at the City Council’s June 4 meeting for the purpose of extending the Seventh Avenue Municipal Service District down Locust and Ash Streets. He reported he met with property owners to inform them of the process. Mail notices have also been sent to property owners by U.S. mail. **The Council expressed no objection to holding a public hearing at their June 4 meeting.**

15. Discussion of Harper Flooding Issue: Engineering Director Brent Detwiler responded to the concerns expressed by Mr. Harper about flooding on his property. Mr. Harper also expressed the concerns to Henderson County and NCDOT. His concern was the sidewalk installed by Henderson County, which was required by the City, caused the flooding.

Mr. Detwiler reported together the City and Henderson County Engineering Departments investigated the concerns. They, along with NCDOT, found no evidence of a previous pipe in an old catch basin on Old Spartanburg Highway. He stated NCDOT will not allow the City nor County to extend a ditch or pipe into their existing curbing along Old Spartanburg Highway. He stated stormwater travels down the road and along Mr. Harper’s property. He stated NCDOT offered to allow Mr. Harper to tie his on-site stormwater into a catch basin along Spartanburg Highway if he is so inclined. He reported at this point, the Henderson County Engineer Marcus Jones and his department, as well as the City, do not find justification to expend public funds to address this private property flooding concerns. He stated the best course of action would be for Mr. Harper to hire an engineer to study possible solutions. Council Member Caraker asked if the problem could be addressed if Mr. Harper ties onto the NCDOT catch basin. Mr. Detwiler stated yes, in his opinion. **The Council by consensus agreed no further action should be taken.**

16. Discussion of Sewer Collection System and Pump Station for Somersby Park: Utilities Director Lee Smith reported staff has been working with residents of Somersby Park for almost two years. He reported they have a low-pressure sewer system that serves 31 homes, 140+ lots. He explained when it was originally developed they chose to go to a step system (septic tank with a pump station at the end which pumps gray water into a low pressure system which is collected in a pump station adjacent to Hebron Road). He stated their problem is that the homeowners association has to keep up with the collection system and the pump station. The City maintains the force main and everything outside of the pump station to its point of discharge.

Mr. Lee Smith reported the City engaged WGLA Engineers, who is familiar with Laurel Park’s system, to review it. He reported WGLA is recommending a two-pump station system because the station is substandard to the City’s standards. To meet City standards, two pump stations are necessary to be able to pump solids. He stated there may be other areas near Somersby Park that may desire sewer service in the future and he does not want to limit the City to a low-pressure gray water system.

Mr. Lee Smith estimated the cost at \$850,000 for the two pump stations and land acquisition. A force main from the station is already in place. He stated the next step would be to determine if, and how, the costs may be divided. He stated the project may benefit the City, Laurel Park and the homeowners in Somersby Park. After discussion, **the Council agreed keep the process moving, to determine the City’s potential, and possibly dividing the cost based on benefit.**

Commendation: Council Member Caraker commended the Water/Sewer Department employees for completing the waterline on Banner Farm Road for future development. He stated the employees allowed the City to meet an economic development commitment.

17. Comments from Mayor and City Council Members

a. Consideration of “Walk of Fame” Committee: Mr. Connet reminded the Council that Mr. Tom Orr requested the establishment of a “Walk of Fame” program to recognize key Henderson County citizens. The City

Council directed staff to work with Mr. Orr and Henderson County to develop the program. Mr. Connet presented the proposed charter and by-laws developed by Assistant County Manager Amy Brantley and himself for this committee.

Council Member Smith commented because the "Walk of Fame" will be in the City of Hendersonville on City streets, the City should select a majority of the membership on that Board (three members). **The majority of the Council agreed by consensus.** Mr. Connet explained the charter and by-laws will have to be jointly approved by the City and County. He will work with Ms. Brantley to amend these documents. **No action was taken.**

18. Reports from Staff

a. Reminder of Special Meeting for Budget Review on Friday, May 8, 2015, 8:00 a.m., City Hall, Second Floor Conference Room: Mr. Connet reminded the Council of the special meeting.

19. Boards and Commissions

a. Consideration of Appointments: There was none.

b. Announcement of Vacancies/Upcoming (Re)appointments: City Clerk Tammie Drake reminded the Council of the vacancies on the Seventh Avenue Advisory Committee, the Environmental Sustainability Board, and a position on the East Flat Rock community Plan Advisory Committee, and the ABC Board. **No action was taken.**

20. New Business: There was none.

21. Request for Closed Session to Discuss Possible Acquisition of Property: At 10:35 p.m., Council Member Caraker moved the Council to enter a closed session to establish or instruct the staff, or negotiating agent, concerning the position to be taken by or on behalf of the City Council in negotiating the price and other material terms of a contract for the acquisition of real property by purchase, option, exchange, or lease as provided under NCGS §143-318.11(a)(5). A unanimous vote of the Council followed. **Motion carried.**

The Council discussed the City's position on the possible acquisition of property.

Council Member Caraker moved the Council to exit the closed session at 10:41 p.m. A unanimous vote of the Council followed. **Motion carried.**

22. Adjournment: The meeting adjourned at 10:41 p.m. upon unanimous assent of the Council.

Barbara G. Volk, Mayor

Tammie K. Drake, City Clerk