

BUNCOMBE COUNTY DEPARTMENT OF PLANNING AND DEVELOPMENT  
REZONING ANALYSIS

CASE NUMBER:	ZPH2015-00052
PROPOSED ZONING CHANGE:	R-LD TO NS
LOCATION:	CHARLOTTE HIGHWAY
PIN:	PORTION OF 9677.21.2223
 APPLICANT/OWNER:	 C DARYL ROSENBERGER
	836 BURNEY MOUNTAIN ROAD
	FLETCHER, NC 28732

DEPARTMENT RECOMMENDATION:        **DENIAL**

**BOARD CONSIDERATIONS:** The Board must determine if there is a reasonable basis for the requested change. An applicant's showing of reasonableness must address the totality of the circumstances and must demonstrate that the change is reasonable in light of its effect on all involved. Good Neighbors of South Davidson v. Town of Denton, 355 N.C. 254, 559 S.E.2d 768 (2002). Determination must be, the “product of a complex of factors.” Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988). Among the factors relevant to this analysis are the size of the tract in question; the compatibility of the disputed zoning action with an existing comprehensive zoning plan; the benefits and detriments resulting from the zoning action for the owner of the newly zoned property, his neighbors, and the surrounding community; and the relationship between the uses envisioned under the new zoning and the uses currently present in adjacent tracts. Id.

**REZONING ANALYSIS:** The applicant is requesting the rezoning of approximately 6.24 acres of a 10.1 acre parcel from R-LD (Low-Density Residential District) to NS (Neighborhood Service District). The subject property is undeveloped and predominately wooded. The subject property is located at the intersection of Cedar Mountain Road and Charlotte Highway (U.S. 74A) near the summit of Mine Hole Gap. Surrounding properties to the north, east and west are primarily characterized by steep topography and single family residential development, zoned R-LD and R-1 respectively. The remaining portion of the subject property to the south (not a part of this rezoning request) as well as neighboring properties are steeply sloped and portions of these properties include the Steep Slope/High Elevation and Protected Ridge Overlay Districts. These properties contain both vacant land and single-family residences. While the subject property does directly access Charlotte Highway at the intersection of Cedar Mountain Road, it is not part of a contiguous commercial corridor and is more than ¼ mile from the closest commercially zoned property to the east (florist/plant nursery) and more than 1/3 mile from commercial zoning to the west (Berrington Village Apartments). The R-LD zoning district is primarily intended to provide locations for low-density residential and related-type development in areas where topographic or other constraints preclude intense urban development. These properties are environmentally sensitive areas that are often characterized by steep slopes and fragile soils. Due to the downward sloping nature of this property from Charlotte Highway (a large portion of this property has been barricaded by an NCDOT guardrail due to topography along the road frontage) and the isolation from surrounding commercial corridors, the RL-D classification is appropriate and the request to rezone the property to NS is incompatible with surrounding topography and land uses. These concerns have been identified in two (2) previous rezoning requests for the subject property. The Board of Commissioners denied map amendment requests (see attached timeline) in both 2010 and 2013 for this property.

The proposed map amendment is inconsistent with Section 78-640(e) Neighborhood Service District (NS) of the Zoning Ordinance of Buncombe County which states that the NS District is intended to provide locations for limited, neighborhood-oriented, commercial, business, and service activities in close

proximity to major residential neighborhoods. Further, these areas should be located at key intersections leading to residential neighborhoods and should neither add to traffic congestion; nor cause obnoxious noise, dust, odors, fire hazards, or lighting objectionable to surrounding residences; nor visually detract from the overall appearance of the neighborhood. Section 6 of the Buncombe County Comprehensive Land Use Plan 2013 Update recommends that denser development be directed to areas with existing infrastructure. The Land Use Constraint maps contained within the Buncombe County Comprehensive Land Use Plan 2013 Update illustrate the following conclusions regarding the subject property:

- The subject property is contiguous to and not readily separated from low-density residential uses.
- The subject property contains steep slope areas of 25% or greater.
- The subject property lies within areas containing high elevations (greater than 2,500 feet).
- The subject property contains areas located along Charlotte Highway with moderate and high slope stability hazards present.
- The subject property is not located within a FEMA Flood Hazard Area.
- The subject property is located along a major transportation corridor.
- The subject property is located within the combined water/sewer service area as indicated on the applicable land use constraint maps. Public water is available along Charlotte Highway and Cedar Mountain Road and public sewer appears to be available along Charlotte Highway (availability not verified).

Figure 20. Appropriate Development Types of the Buncombe County Comprehensive Land Use Plan 2013 Update identifies neighborhood-scale commercial development as “suggested” within areas that are within reasonable proximity to major transportation corridors and combined water/sewer service areas; however, the plan also highly suggests that this type of development be located outside of moderate and high slope stability hazard areas, steep slope areas and high elevations, and further suggests that neighborhood-scale commercial development be separated from low-density residential uses. The proposed map amendment would be detrimental to the adjacent neighbors, and surrounding community as it is inconsistent with the zoning of surrounding properties and would allow incompatible commercial uses within an existing low density residential area. Therefore the proposed map amendment is not appropriate.

Given, that the proposed map amendment would be incompatible within an area containing predominately single-family residential development, surrounding topography and restricted access from Charlotte Highway, the Buncombe County Department of Planning and Development recommends **denial** of the request.

## LAND USE PLAN CONSISTENCY STATEMENTS

**Inconsistent:** The proposed map amendment is inconsistent with the Buncombe County Land Use Plan and the associated Land Use Constraint maps contained within the Buncombe County Comprehensive Land Use Plan 2013 Update. The following information is relevant to the subject property:

- The subject property contains steep slope areas of 25% or greater.
- The subject property lies within areas containing high elevations (greater than 2,500 feet).
- The subject property contains areas located along Charlotte Highway with moderate and high slope stability hazards present.
- The subject property is contiguous to and not readily separated from low-density residential uses.

Figure 20. Appropriate Development Types of the Buncombe County Comprehensive Land Use Plan 2013 Update highly suggests that this type of development be located outside of moderate and high slope stability hazard areas, steep slope areas and high elevations, and further suggests that neighborhood-scale commercial development be separated from low-density residential uses. The proposed map amendment would be detrimental to the adjacent neighbors, and surrounding community as it is inconsistent with the zoning of surrounding properties and would allow incompatible commercial uses within an existing low density residential area. Therefore, the requested zoning **would not be reasonable and in the public interest.**

**Consistent:** The proposed map amendment is consistent with the Buncombe County Land Use Plan and the associated Land Use Constraint maps contained within the Buncombe County Comprehensive Land Use Plan 2013 Update. The following information is relevant to the subject property:

- The subject property is not located within a FEMA Flood Hazard Area.
- The subject property is located along a major transportation corridor.
- The subject property is located within the combined water/sewer service area as indicated on the applicable land use constraint maps. Public water is available along Charlotte Highway and Cedar Mountain Road and public sewer appears to be available along Charlotte Highway (availability not verified).

Figure 20. Appropriate Development Types of the Buncombe County Comprehensive Land Use Plan 2013 Update identifies neighborhood-scale commercial development as “suggested” within areas that have a reasonable proximity to major transportation corridors and proximity to combined water/sewer service areas. The proposed map amendment would not be detrimental to the adjacent neighbors, and surrounding community as it would allow for a mix of residential, commercial, business and service uses along a major transportation corridor. Therefore, the requested zoning would be **reasonable and in the public interest.**

**ZONING HISTORY OF SUBJECT PROPERTY - PIN 9677.21.2223****2007**

- Initial proposed zoning R-LD
- WNC Mountain Land Corp requested approximately 5.7 acres along Charlotte Highway (US 74A) to be zoned NS
- Portion along highway was re-assigned NS, central portion assigned R-3 and rear portion retained R-LD designation

**2009**

- Appeals Court struck down countywide zoning ordinance
- Zoning map was reviewed for all areas that courts might view as “spot zoning”
- Property was identified as having the potential to be viewed as spot zoning based on assigned designations and entirely zoned R-LD

**2010**

- February – WNC Mountain Land Corp applied to rezone property to NS
- March – Planning Board recommended approval of the rezoning request
- April – Board of Commissioners denied rezoning request
- October – Zoning overlays adopted placing approximately half of subject property within the Steep Slope/High Elevation and Protected Ridge Overlay Districts

**2013**

- May – C. Daryl Rosenberger applied to rezone a portion of property to NS
- June – Planning Board recommended approval of the rezoning request
- August – Board of Commissioners denied rezoning request