

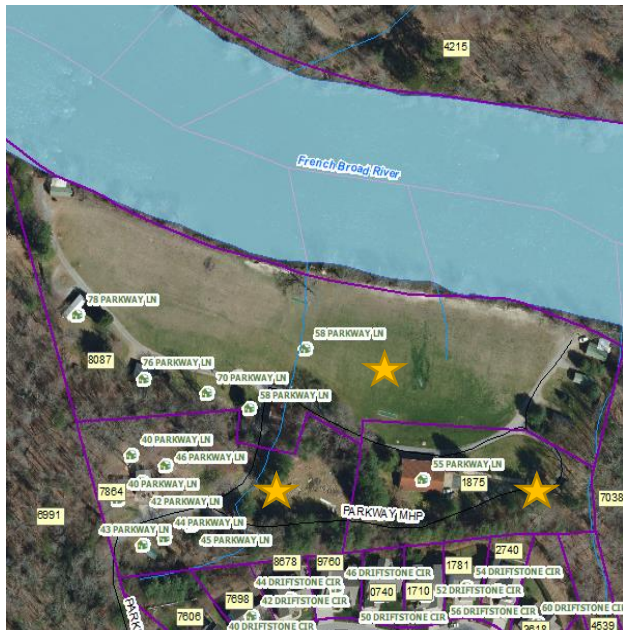


# ZONING MAP AMENDMENT

## STAFF ANALYSIS

*Legislative Hearing*

### LOCATION MAP



**CASE NUMBER:** ZPH2020-00024

#### A. PROPERTY INFORMATION

**PIN(s):** 9635.62.7864, 9635.72.1875, 9635.63.8087  
**Addresses:** Multiple addresses (40-46, 55, 58-78) Parkway Lane located east of Clayton Road  
**Owner(s):** Freeze Interprize, LLC

#### B. REZONING REQUEST

**Applicant / Agent:** Brett Turner  
**Existing Zoning:** R-1 Residential  
**Proposed Zoning:** PS (Public Service)

#### C. PUBLIC NOTICE

Planning Board Notice in AVL Citizen Times legal ad: 10/07/2020  
Planning Board Notice mailed to owners within 1,000 ft: 10/07/2020  
Planning Board Physical posting: 10/09/2020  
Planning Board Notice on BC Website: 10/07/2020  
Planning Board Hearing # 1: 10/19/2020  
Planning Board Comment Period Deadline: 24 hrs. from 10/19/2020  
Planning Board Hearing # 2: 11/02/2020  
Board of Commissioners Notice in AVL Citizen Times legal ad: 11/04/2020, 11/11/2020  
Board of Commissioners Notice mailed to owners within 1,000 ft: 11/04/2020  
Board of Commissioners Physical posting: 11/04/2020  
Board of Commissioners Hearing: 11/17/2020

### D. SUMMARY OF REQUEST

Brett Turner, on behalf of Whitaker Investment Group LLC, requests to rezone three (3) parcels of land from R-1 Residential District to PS Public Service District.

### E. RECOMMENDATION

APPROVAL (see Section J, below)

### F. COMPARISON OF ZONING ORDINANCE DISTRICT STATEMENT OF INTENT

#### EXISTING ZONING DISTRICT:

##### *Residential District (R-1)*

The R-1 Residential District is primarily intended to provide locations for single-family and two-family residential development and supporting recreational, community service, and educational uses in areas where public water and sewer services are available or will likely be provided in the future. This district is further intended to protect existing subdivisions from encroachment of incompatible land uses, and this district does not allow manufactured home parks.

#### PROPOSED ZONING DISTRICT:

##### *Public Service District (PS)*

The PS Public Service District is intended to be a district that includes, but is not limited to, governmentally owned properties; schools and large college properties; recreation parks and facilities; emergency services; and community clubs. Such uses should currently have public water and sewer services available or have a provision for internal supply of appropriate utilities.

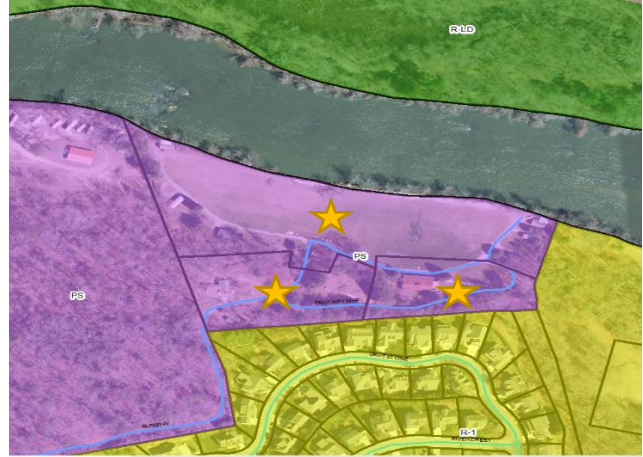
## G. SPOT ZONING ANALYSIS

Staff has no concerns with spot zoning, given that the property is contiguous to existing PS zoning to the west. The rezoning would bring more consistency to a site that has historically seen a gradual transition from a manufactured home park to a property with a mix of RV's (park models), accessory structures and site built structures.

**EXISTING ZONING DISTRICT – R-1**



**PROPOSED ZONING DISTRICT - PS**



## H. COMPREHENSIVE LAND USE PLAN CONSISTENCY (See Figure 20 on page 4)

- LAND USE PLAN RECOMMENDATIONS:** The following is an analysis of the rezoning proposal in context of Figure 20. *Appropriate Development Types of the Buncombe County Comprehensive Land Use Plan 2013:*

BUNCOMBE COUNTY COMPREHENSIVE LAND USE PLAN 2013				SECTION 6: ISSUES AND RECOMMENDATIONS			
— Not Required ☺ Suggested ★ Highly Suggested	Reasonable proximity to major transportation corridors	Reasonable proximity to infrastructure (combined water/ sewer service area)	Outside of steep slope areas (25% +)	Outside of high elevations (2500' +)	Outside of moderate and high slope stability hazards	Outside of flood hazard areas	Separation from low-density residential uses
<b>RESIDENTIAL</b>							
Low-Density Residential	—	—	—	—	—	★	N/A
Single-Family/Duplex	☺	☺	☺	☺	★	★	N/A
Multi-Family	★	★	☺	☺	★	★	☺
<b>PLANNED COMMUNITY OR DEVELOPMENT</b>							
Mixed Use Development	★	★	★	★	★	☺	☺
Infill/ Higher Density	☺	★	★	★	★	★	—
Large Lot/Lower Density	☺	☺	☺	☺	★	★	N/A
Commercial/Industrial	★	★	★	★	★	★	★
<b>RECREATIONAL</b>							
Resort	☺	☺	☺	☺	☺	★	—
Conference Centers	☺	☺	☺	☺	☺	★	—
Outdoor Recreation	—	—	—	—	—	☺	★
<b>OTHER</b>							
Institutional	★	★	★	★	★	☺	☺
Public Service	★	★	★	★	★	☺	☺
<b>COMMERCIAL</b>							
Neighborhood-Scale Commercial	☺	☺	★	★	★	☺	☺
Moderate Commercial	★	★	★	★	★	☺	★
Intense Commercial	★	★	★	★	★	☺	★
<b>INDUSTRIAL</b>							
Manufacturing	★	★	★	★	★	☺	☺
Mining/Extracting/Refining	★	★	★	★	★	☺	★
Other Intense Uses	☺	☺	★	★	★	☺	★

Figure 20. Appropriate Development Types

55

<p>2. <b>CONSISTENT:</b> The change is <u>consistent</u> with the following recommendations of the Comprehensive Land Use Plan 2013 Update as outlined below:</p>	<p>“Reasonable proximity to major transportation corridors” [suggested / highly suggested] – <u>the property is located in close proximity to Clayton Road. Clayton Road is located approximately 1 mile from Long Shoals Road, and both roads are maintained by the NCDOT.</u></p> <p>“Reasonable proximity to infrastructure (combined water / sewer service area)” [suggested / highly suggested] – the property is served by MSD sewer and onsite water is provided via a system of existing and soon to be upgraded wells. <u>Public water via the City of Asheville is located along Clayton Road and the applicant is in the process of negotiating a water line easement with the adjacent property to the west to bring public water to the subject property.</u></p> <p>“Outside of steep slope areas (25%+)” [highly suggested] <u>In compliance with suggestion.</u></p> <p>“Outside of high elevations (2500’+)” [highly suggested] <u>In compliance with suggestion.</u></p> <p>“Outside of moderate and high slope stability hazards” [highly suggested] <u>In compliance with suggestion.</u></p> <p>“Outside of flood hazard areas” [suggested] <u>Somewhat in compliance with suggestion. See below for more detail.</u></p> <p>“Separation from low-density residential uses” [suggested / highly suggested] <u>Separation is achieved through natural topographical changes and an existing vegetative buffering that separates the site from the adjacent single-family neighborhood to the south.</u></p>
<p>3. <b>INCONSISTENT:</b> The change is <u>inconsistent</u> with the following recommendations of the Comprehensive Land Use Plan 2013 Update as outlined below:</p>	<p>Not Applicable.</p>
<p>4. <b>OTHER COMMENT:</b></p>	<p>The subject property meets the Land Use Plan criteria for both residential and commercial future land use categories.</p> <p>The Board should consider the need to evaluate this map amendment based on changes in land use patterns/demands in the area and the unique opportunity to enhance an existing site through adaptive reuse.</p>

## I. NEIGHBORHOOD CONSISTENCY

### 1. CURRENT DEVELOPMENT TYPES:

The subject property consists of three (3) individual parcels that contain a mix of structures. The property has transitioned over the years as noted in Section G. above. The surrounding neighborhood contains a mixture of uses including residential, institutional and commercial components. The subject property is bounded to the north by the French Broad River, to the east by a single-family home and vacant property, to the south by a single family neighborhood and to the west by a large parcel owned by the Asheville Firefighters Association that is used for assembly and civic engagement purposes.





## 2. ALLOWED DEVELOPMENT TYPES AFTER CHANGE:

The proposed rezoning would open the site to a number of residential, commercial and institutional options. However, it should be noted (and discussed in further detail below) that access to the site is afforded via an easment across the Asheville Firefighters Association property and will likely limit intensive development on the site due to the existing conditions of the entry drive (paved). See below for additional information regarding utilities.

## 3. ALLOWABLE DENSITY / DIMENSIONAL STANDARDS AFTER CHANGE:

	Existing District:	Proposed District:
	R-1 Residential	PS Public Service
Minimum Lot Size	30,000 SF (Septic System) 12,000 SF (Public Sewer, No Water) 8,000 (Public Water and Sewer)	30,000 SF (Septic System) 10,000 SF (Public Sewer, No Water) 5,000 SF (Public Water and Sewer)
Max dwelling units per acre	10, (no more than 2 units/lot)	12
Setbacks (Front/Side/Rear)	10/7/15 (Sewer) 20/10/20 (Septic)	20/10/20 (Sewer) 20/10/20 (Septic)
Max height	35 feet	50 feet

## 4. NEIGHBORHOOD CONSISTENCY & INFRASTRUCTURE/PREVIOUS ZONING ACTIONS:

The subject property consists of three (3) parcels and is currently zoned R-1. The properties were part of Asheville's former Extra-Territorial Jurisdiction (ETJ). As mentioned above, the property has transitioned over the years from a manufactured home park to a site that now contains a mix of park model RV's, accessory structures and other site built structures.

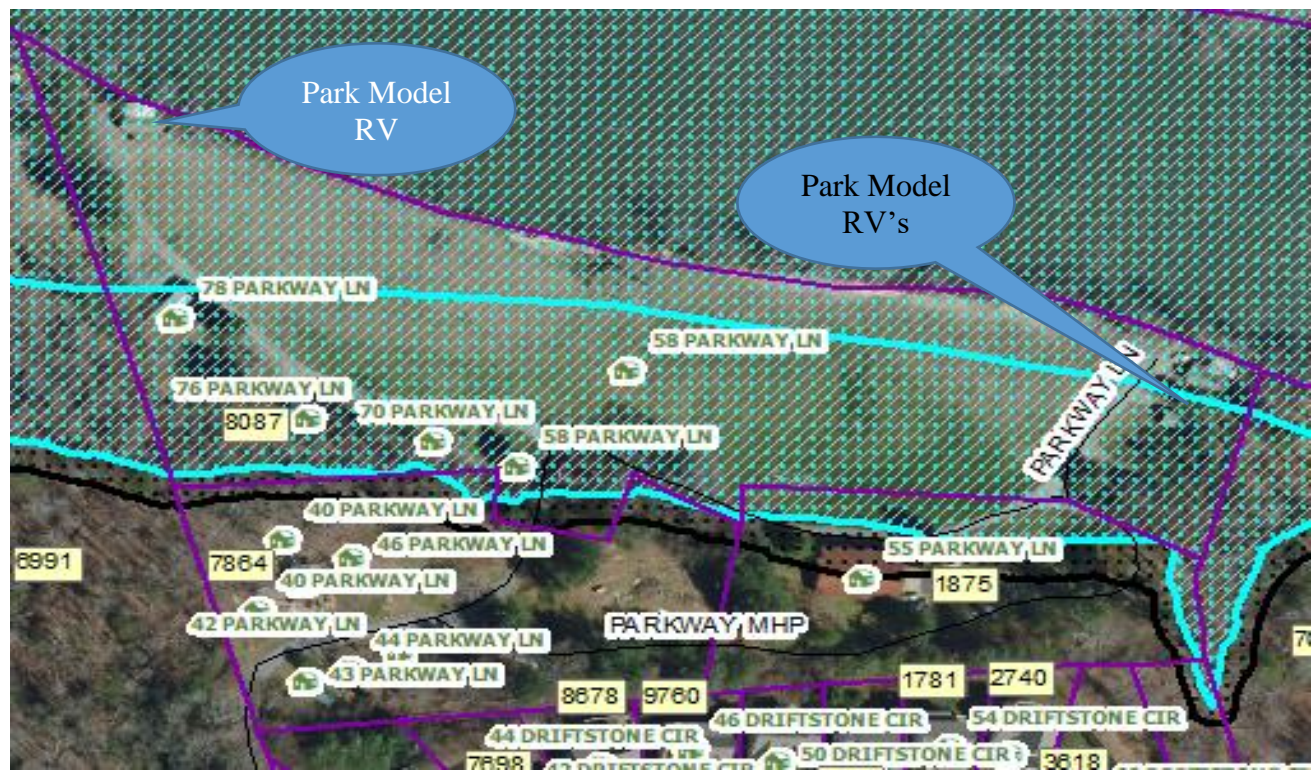
A request to rezone this property from R-1 to R-3 in 2013 was denied by the Board of Commissioners largely due to concerns related to spot zoning.



**Access** to the site is taken from a narrow (11.5' in some areas) paved driveway contained within an easement that connects to Clayton Road. The applicant has provided a supplemental document that indicates that this easement has existed since 1966. Any future development onsite will likely trigger the need for this access to be improved, and the apron along Clayton Road to be realigned due to awkward existing road geometry.

**Utilities** – the property can be served by public sewer and an allocation letter has been obtained from MSD. While there is an easement to the property that affords ingress/egress rights to the property, the easement in its current configuration does not allow it to be used for the extension of utilities. The applicant has been in negotiations with the adjacent property to explore the possibility of running a public water line to the site from Clayton Road. The PS zoning district statement of intent specifies that “such uses should currently have public water and sewer services available or have a provision for internal supply of appropriate utilities.” Some provision for water is currently supplied to the site via a well or system of wells. The applicant has engaged a professional engineer to explore the possibility of expanding this system. If water is derived from a well or wells to accommodate future development, the potential for intensive commercial development onsite will be limited.

**Flood/Special Flood Hazard Area (SFHA)** – A large portion (see map below) of the subject property is encumbered by the SFHA inclusive of both the floodway and the 100 year “flood fringe.” The City of Asheville had flood permitting authority until 2013 when their ETJ was abolished. Between 2002 and 2006 (based on available aerial imagery), at least three (3) park model RV's were established in the SFHA. Two (2) of these vehicles were placed in the floodway along the bank of the river and began to take on permanent characteristics and improvements over the years including utilities, decks, roofs and other appertanunces. Staff has been unable to locate any permits from the City of Asheville that substantiate that these vehicles or improvements were legal or valid. Unpermitted structures in the SFHA and specifically the floodway are a violation of the Flood Damage and Prevention Ordinance. Futher, and pursuant to a memo from the North Carolina Office of the State Fire Marshal (OSFM), park model RV's are intended for seasonal use and are not intended as a permanent dwelling unit or for commercial uses.



**Future Development** – While specific site development plans cannot be considered as part of a zoning map amendment, future development of the site will likely trigger a review by the Board of Adjustment through the Conditional Use Permit process.

#### J. STAFF RECOMMENDATION COMMENTS:

Staff recommends **approval** of the rezoning request as submitted. Staff will work with the applicant to assure compliance with flood standards independent of the zoning map amendment process. Pursuant to NC case law, “individual, particularized conditions on rezonings to a general-use district are unenforceable in North Carolina.”

*References: Decker v. Coleman, 6 N.C. appl. 102, 169 S.E.2d 487 (1969), Owens, David, W., Land Use Law in North Carolina, 3<sup>rd</sup> Edition, UNC School of Government, 2020.*

#### K. PLANNING BOARD/BOC RECOMMENDATION

##### 1. BOARD BASIS FOR DECISION MAKING

The Board must determine if there is a reasonable basis for the requested change in light of its effect on all involved including the following considerations:

- The requested change does not directly or indirectly result in the creation of spot zoning
- Size of the tract in question
- Compatibility of the change with existing Comprehensive Land Use Plan
- Benefits and detriments resulting from the change for the owner of the newly zoned property, his neighbors, and the surrounding community
- Relationship between the uses envisioned under the new zoning and the uses currently present in adjacent tracts

*References: Good Neighbors of South Davidson v. Town of Denton, 355 N.C. 254, 559 S.E.2d 768 (2002)  
Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988)*

##### 2. BOARD OPTIONS

The following options are available to the Board:

- a. Recommend approval of the proposed rezoning, as presented.
- b. Recommend denial of the proposed rezoning, as presented.

#### L. ATTACHMENTS

3. Power Point Presentation
4. Ordinance to approve/deny
5. Consistency Statement
6. Maps



**BUNCOMBE COUNTY**  
NORTH CAROLINA  
**PLANNING & DEVELOPMENT**  
(828) 250-4830 - PlanningInfo@BuncombeCounty.org  
www.buncombecounty.org/planning

**Application for a Zoning**  
**MAP AMENDMENT**  
**(Rezoning)**

**PLEASE NOTE:**

A PRE-SUBMITTAL CONFERENCE WITH THE ZONING ADMINISTRATOR IS REQUIRED PRIOR TO SUBMITTING THIS APPLICATION FOR A CONDITIONAL USE PERMIT

*Please complete all sections of the application.*

**A. Property Information**

Application is hereby made to the Board of Commissioners of Buncombe County to amend the Official Zoning Map of Buncombe County as pertains to the following properties:

PIN(s): 9635627864, 96357221875, 9635638087

Address(es): 40, 55, 58 PARKWAY Lane, Arden, NC 28704

Acres: 8.72

**B. Zoning Classification**

Current zoning district(s): R-1 Requested zoning district(s)\*: PS

*\*If only a portion of the property is requested to be rezoned, or a rezoning to include more than one zoning district is proposed, please enclose a map indicating the area(s) of the property to be considered for rezoning.*

**C. Applicant Contact Information**

**Property Owner Contact Information (If different)**

Whitaker Investment Group, LLC

Company/Corporate Name (if applicable)

Brett S. Turner

Applicant's Name

PO Box 22615

Mailing Address

Charleston, SC 29413

City, State, and Zip Code

(912) 658-0549

Telephone

brett@wig-us.com

Email

Free Interprize, LLC

Mike Esposito

Owner's Name

Mailing Address

City, State, and Zip Code

( )

Telephone

Email

**OFFICE USE ONLY:**

Case Number: ZPH 20 - 00024

Date Received: 8/20/20

Scheduled Planning Board Hearing Date: 9/21/20



See attached 'Section D Responses'

**D. MAP AMENDMENT CONSISTENCY & APPROPRIATENESS**

**Please answer the following questions (if necessary attach a separate sheet of paper):**

1. Describe how the size of the tract proposed for rezoning in reference to surrounding properties makes it suitable for the proposed zoning classification:

---

---

---

---

---

---

---

2. Describe how the proposed rezoning is consistent with Buncombe County's Comprehensive Land Use Plan (*The plan is available on the Planning Department website.*) Please reference recommendations outlined on page 5 of the Land Use Plan when answering this question:

---

---

---

---

---

---

---

3. Describe how the proposed rezoning would be reasonable and in the public interest, with specific attention to the zoning and existing land uses of surrounding properties, and the potential effects of the proposed rezoning on property owners, adjacent neighbors, and the surrounding community.

---

---

---

---

---

---

---

---

---

---

---



## SECTION D RESPONSES

- 1) This application is for the improvement and development of additional rental cabins to the existing Asheville River Cabins rental property. The property is 8.72 acres. Central water and sewer service is already run into the property and available for the proposed expansion.
- 2) Historically, the property has been operated as a mobile home and RV park. It is currently being operated as a rental cabin business with an owner's home on the property. The improvement and expansion of the property is consistent with the current residential use of the property and surrounding properties. The property directly adjacent to the west is also zoned PS. This riverfront redevelopment will be both an economic benefit to the area consistent with the intent of the County's land use plan, as well as environmentally responsible by improving an area of existing development impact.
- 3) The proposed development is reasonable and in the public interest due to its consistency with the existing development and neighboring land uses. Although the development will be expanded, the infrastructure in the area is sufficient to support the addition of more rental units. The applicant intends to present comprehensive development plans to the planning board and welcomes public comment.

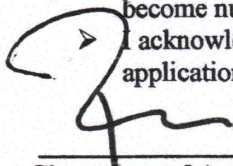
4. Is/are the applicant(s) listed below the owner(s) of the property? ☐ Yes ☒ No

*If the applicant(s) listed herein are not the owner(s) as listed within the Buncombe County Tax Records, North Carolina General Statutes require the applicant to certify that the owner(s) received notice for each public hearing. An owner's affidavit must be submitted with this application, and certification of notice must be provided by the applicant once notice has been made for each public hearing 5 days prior to the hearing date; sample documents for both items can be obtained from the Planning Department.*

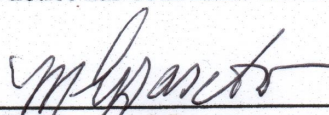
**E. CERTIFICATION**

- I hereby certify that I am the owner, authorized agent of the owner, or have provided legal notification to the owner, and the above information is correct to the best of my knowledge and hereby make application for a Zoning Map Amendment. Any information given that is incorrect will cause this application to become null and void.

➤ I acknowledge that withdrawal of this application after notice has been made will result in forfeiture of any application fees associated with said application.



\_\_\_\_\_  
Signature of Applicant



\_\_\_\_\_  
Signature of Owner

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Signature of Owner

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Signature of Owner

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Signature of Owner

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Signature of Owner

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Signature of Owner