

Buncombe County Planning Board  
June 17, 2013

The Buncombe County Planning Board met June 17, 2013 in the meeting room at 30 Valley Street. Members present were Bud Sales, Josh Holmes, Bernie Kessel, Chairman Tom Alexander, and Michelle Wood. Also present were Michael Frue, County Attorney; and Gillian Phillips and Debbie Truempy, Planning staff.

**Call to Order**

Chairman Alexander called the meeting to order at 10:00 am.

**Approval of Agenda**

Mr. Kessel made a motion to approve the agenda. Mr. Holmes seconded the motion and the motion passed unanimously.

**Approval of Minutes (June 3, 2013)**

Mr. Holmes made a motion to approve the minutes as submitted. Mr. Sales seconded the motion, and the motion passed unanimously.

**Public Hearings (Zoning Map Amendments)**

***ZPH2013-00013: Extraterritorial Jurisdiction of the City of Asheville*** The proposed amendments will allow for expansion of Buncombe County zoning into those areas within the City of Asheville Extraterritorial Jurisdiction (ETJ) as a result of recent jurisdictional changes related to the adoption of N.C. General Assembly Session Law 2013-30.

The Board was provided with the staff proposed consistency statement prior to the meeting (Attachment A). Ms. Truempy introduced the case to the Board. Chairman Alexander opened the public hearing. The following individuals made public comment:

- Mike Plemmons, representing the Council of Independent Business Owners (CIBO), described concerns regarding how those properties in the ETJ were currently treated by the City of Asheville, and raised concerns regarding some industrial uses within the ETJ that would become existing non-conforming uses when they became zoned by the County.
- Susan Montello raised concerns regarding whether a portion of a road in her subdivision was under jurisdiction of the City or the County.
- Dick Marshal asked some questions about the Chunns Coves Road area. Ms. Truempy answered the questions.
- Sally Stines asked questions regarding utilities in the Chunns Cove Road area. Ms. Truempy answered the questions.
- Phillip Robinson asked questions regarding how the building permit process would change.
- Jim Freeman asked questions regarding a subdivision currently within the City of Asheville's jurisdiction. Ms. Phillips described how developments that currently had City of Asheville approval would be treated.
- Hennet Smith, representing the Henson Corporation, asked some questions regarding how existing non-conforming uses would be treated. Ms. Truempy described the regulations for non-conforming uses within the Zoning Ordinance

Chairman Alexander closed the public portion of the meeting.

The Board discussed non-conforming uses. Ms. Truempy described how the proposed zoning was chosen. The public present asked a few more questions. Mr. Kessel made a motion to approve the maps with the consistency statements provided in Attachment A. Upon a second the Board unanimously approved the map amendment.

**ZPH2013-00018:** *C. Daryl Rosenberger has applied to rezone a portion of tax lot PIN 9677-21-2223 (located on the Southern side of Charlotte Highway East of the intersection with Cedar Mountain Road), which is currently zoned Low Density Residential (R-LD) to Neighborhood Service District (NS).*

Ms. Truempy made the presentation to the board. Allen Helmick, a partial owner of the property was present to make a presentation. Mr. Helmick described his real estate career in Fairview for the Board. Mr. Helmick described the property as terraced, and indicated that there would be locations appropriate for commercial development. Mr. Helmick described the history of the subject property and the different map amendments requests it had been subject too. He indicated that he had already spoken to four members of the Board of Commissioners, and they had indicated their support for the rezoning. The Board asked questions regarding the history of map amendment requests for this property. Ms. Truempy described the history of map amendment requests.

Chairman Alexander asked if anyone would like to make public comment, and the following individuals made public comment:

- Jeremy Jones indicated that he lived on Cedar Mountain Road and raised concerns regarding traffic safety and runoff if a commercial development was placed on the property.
- Darren Strup indicated that he lived on Cedar Mountain Road and raised concerns regarding increased traffic, noise, light pollution, and reduction of open space.
- Steve Smisher with the NC Wildlife Federation (and a resident of Fairview) spoke regarding loss of a critical wildlife corridor, expressed opposition to the map amendment.

There being no one else wishing to make public comment, Chairman Alexander closed the public hearing. Mr. Sales indicated he lived in the area and that there were numerous accidents at the corner of Cedar Mountain Road and Charlotte Highway. The Board discussed the proposed zoning, whether or not it would be considered a spot zoning, the utilities available at the subject property, and the commercially zoned property in the surrounding area. Mr. Holmes then made a motion to recommend approval of the map amendment with the consistency statement provided in Attachment B. Mr. Sales seconded the motion. Bud Sales, Josh Holmes, Bernie Kessel, and Michelle Wood voted for the motion and Chairman Alexander voted against it. The motion passed 4 to 1.

#### **Public Comment**

Jim Freeman asked questions regarding a subdivision currently within the City of Asheville's jurisdiction.

#### **Adjournment**

There being no further business on the agenda, Mr. Holmes made a motion to adjourn, Mr. Sales seconded the motion, and the motion passed unanimously. The meeting was adjourned at 11:00 am.

# ATACHMENT A

## BUNCOMBE COUNTY DEPARTMENT OF PLANNING AND DEVELOPMENT STATEMENT OF CONSISTENCY, REASONABLENESS, AND PUBLIC INTEREST

CASE NUMBER : ZPH2013-00013  
LOCATION : ASHEVILLE ETJ

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

STATEMENT OF CONSISTENCY, REASONABLENESS, AND PUBLIC INTEREST: The proposed map amendments are consistent with the Buncombe County Comprehensive Land Use Plan and Updates as the 2006 Buncombe County Comprehensive Land Use Plan Update recommends “Applying detailed zoning to the area that lies within the updated Metropolitan Sewer District (MSD) boundary that is the Primary Service Area” (VII-3). As the area within the Asheville Extraterritorial Jurisdiction is primarily within the MSD service area, the proposed map amendments are consistent with the Buncombe County Comprehensive Land Use Plan Update. The zoning adoption is reasonable and in the public interest as the property is not currently zoned by Buncombe County and the authority to regulate development and land use will move from the City of Asheville to Buncombe County.

**ATTACHMENT B**

BUNCOMBE COUNTY DEPARTMENT OF PLANNING AND DEVELOPMENT  
REZONING ANALYSIS

CASE NUMBER : ZPH2013-00018  
 PROPOSED ZONING CHANGE : R-LD TO NS  
 LOCATION : Charlotte Highway  
 PINs : a portion of 9677.21.2223  
 ACREAGE : approx. 6 acres

APPLICANT/OWNER: C. DARYL ROSENBERGER  
 6266 LAKE DRIVE  
 STARKE, FLORIDA 32091

**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 SUMMARY:** The applicant requests rezoning of approximately 6 acres of a 10.1 acre tract from R-LD (Low Density Residential District) to NS (Neighborhood Service District). The subject property is located at the southeast corner of the intersection of Charlotte Highway and Cedar Mountain Road. The property is currently wooded and undeveloped. The surrounding area is comprised of other tracts of large undeveloped land and residential development. The application does not include a large amount of land in relation to the surrounding area and does not include a large number of property owners and could be viewed as a spot zoning by the courts. Additionally, the Buncombe County Zoning Ordinance statement of district intent for the R-LD zoning district indicates that the district is intended for areas that are environmentally sensitive and categorized by conditions such as steep slopes and fragile soils (30). Given the grade of the property, R-LD is considered an appropriate zoning classification, while NS would not be. The map amendment is not consistent with the Buncombe County Comprehensive Land Use Plan as the 2006 Buncombe County Comprehensive Land Use Plan Update indicates that “the type of uses allowed and the standards established for development in this NS district should be compatible with the residential character of the area and should neither add to traffic congestion; cause obnoxious noise, dust, odors, fire hazards or lighting objectionable to surrounding residences; nor visually detract from overall appearance of the neighborhood” (VII-4). While commercially zoned property does exist in the area it is approximately 2000 feet to the east and west of the subject property, and approval of the property as a commercial zoning could lead to the encroachment of a commercial use into an established residential area. Additionally, the Board of Commissioners previously denied a map amendment request for the tract to be zoned NS in 2010. Therefore the Buncombe County Department of Planning and Development recommends **DENIAL** of the request.

**LAND USE PLAN CONSISTENCY STATEMENTS***NOT CONSISTENT:*

The map amendment is not consistent with the Buncombe County Comprehensive Land Use Plan as the 2006 Buncombe County Comprehensive Land Use Plan Update indicates that “the type of uses allowed and the standards established for development in this NS district should be compatible with the residential character of the area and should neither add to traffic congestion; cause obnoxious noise, dust, odors, fire hazards or lighting objectionable to surrounding residences; nor visually detract from overall appearance of the neighborhood” (VII-4). The requested zoning would not be reasonable or in the public interest as it would allow for a commercial business in an area that includes a large amount of residential development.

*CONSISTENT:*

The requested zoning is consistent with the Buncombe County Comprehensive Land Use Plan as the 2006 Buncombe County Comprehensive Land Use Plan Update indicates that NS “is designed to allow for a mix of residential, commercial, business and service uses in limited areas at key intersections leading to residential neighborhoods” (VII-4). The requested zoning would be reasonable and in the public interest as it would allow for a commercial business in an area that allows a wide variety of commercial uses.