

**Buncombe County Planning Board  
October 2, 2017**

The Buncombe County Planning Board met on October 2, 2017 in the meeting room at 30 Valley Street. Members present were Gene Bell, Joan Walker, Nancy Waldrop, Dusty Pless, Robert Martin, David Rittenberg, and Billy Taylor. Also present were Michael Frue, Staff Attorney; Jon Creighton, Planning Director; and Debbie Truempy and Shannon Capezzali, Planning staff.

**Call to Order**

Gene Bell called the meeting to order at 9:30 am.

**Approval of Agenda**

David Rittenberg made a motion to approve the agenda. The motion was seconded by Dusty Pless and passed unanimously.

**Approval of Minutes (September 18, 2017)**

Nancy Waldrop made a motion to approve the September 18, 2017 meeting minutes. The motion was seconded by Robert Martin and passed unanimously.

**Public Hearing – Zoning Map Amendment:**

***ZPH2017-00064:*** Kevin High of Highway LLC applied to rezone one (1) parcel further described as tax lot PIN # 9654-99-6611 and further described as property to the south of 8202 Terra Drive which is currently zoned Residential District (R-1) to Residential District (R-2).

Debbie Truempy presented the Zoning Map Amendment request and staff recommendations (Attachment A). Staff recommended denial of the request as it is not consistent with the Comprehensive Land Use Plan and represents a spot zoning. Kevin High represented the application and provided handouts and information to the Board. Gene Bell opened the meeting to public comment.

There was the following public comment. Frans Moorees, resident of the neighborhood, stated that he also represented six additional townhome owners against the rezoning. He said a rezoning would affect the valuation of nearby properties, allow unwanted density, and that the property is steep and a natural drainage for the area. Irene Transelo, resident of the neighborhood, stated that she is upset about the removal of fauna, flora, and trees from the steep site and expressed concern about traffic.

Gene Bell closed the public hearing as there was no one else wishing to speak. Kevin High addressed public concerns. Robert Martin stated that it was a case of spot zoning. Joan Walker felt that the whole subdivision should be zoned R-2. Nancy Waldrop asked whether the Board can make recommendations to the Board of Commissioners for a review of the existing zoning to determine if there are areas that should be changed based on existing uses. Debbie Truempy said that the Board could make recommendations to the Commissioners. David Rittenberg stated that the property was R-1 when purchased and could be developed under those requirements. Dusty Pless, Joan Walker, and Billy Taylor felt that the proposed rezoning would be consistent with the existing development of the subdivision.

Robert Martin made a motion to recommend denial of the zoning map amendment as it is not consistent with the Comprehensive Land Use Plan. David Rittenberg seconded the motion to

recommend denial. The motion passed by a vote of 4 to 3 with Dusty Pless, Joan Walker, and Billy Taylor opposing.

**Public Hearing – Zoning Text Amendment:**

**ZPH2017-00067:** *The proposed amendments would modify Chapter 78 of the Zoning Ordinance of Buncombe County as follows:*

1. *Modify §78-719, Purposes in View as follows:*
  - *Add clarifying language that ties adoption or rejection of zoning amendments to the comprehensive plan based on recent changes to state law adopted by the NCGA.*
2. *Modify §78-645(e)(3) and (4), Protected Ridge Overlay District as follows:*
  - *Add clarifying language that removes references to the orientation of structures in relationship to the crest of the ridge to assist in the application of the Protected Ridge Overlay District's goals of regulating height and width of structures.*
3. *Modify §78-650(c)(1)(a), Community Oriented Development as follows:*
  - *Clarify and add language to the methodology for which density is calculated for Community Oriented Developments.*

Debbie Truempy provided information about the proposed text amendments and staff recommendations (ATTACHMENT B). Staff recommended approval as the proposed amendments are consistent with the Comprehensive Land Use Plan. Gene Bell opened the hearing to public comment. There was no one wishing to make comment.

Robert Martin made a motion to recommend approval of the proposed amendments as they are consistent with the Comprehensive Land Use Plan. Billy Taylor seconded the motion and it passed unanimously.

**Public Comment**

None

**Adjourn**

The meeting was adjourned at 10:10 a.m.

**BUNCOMBE COUNTY DEPARTMENT OF PLANNING AND DEVELOPMENT  
REZONING ANALYSIS**

CASE NUMBER : ZPH2017-00064  
 PROPOSED ZONING CHANGE : R-1 to R-2  
 LOCATION : Property to the South of 8202 Terra Drive  
 PIN(s) : 9654-99-6611  
 APPLICANT/OWNER : Kevin High (Highway, LLC)

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 one (1) parcel comprising approximately 2.06 acres located south of 8202 Terra Drive and currently zoned Residential District (R-1) to Residential District (R-2). The subject property is currently vacant and is the last remaining undeveloped parcel within the Mon Terra neighborhood. The subject property has direct frontage along Terra Drive which intersects with Mills Gap Road. The entirety of the neighborhood is zoned R-1 and is developed with a series of apartment and townhome units grouped in 3-5 unit buildings (1 building per lot) with the exception of a new single-family residence currently under construction at the entrance of the neighborhood at 8200 Terra Drive. The applicant is seeking the rezoning in order to construct a 12 unit townhome development housed in two (2) separate buildings and separated by a parking lot.

Terra Drive is a paved and privately maintained road. The dwelling units (with the exception of the single-family residence currently under construction) were all built in 1983 according to Buncombe County tax records. While public water serves the development, wastewater disposal is provided via individual septic systems. It is unclear if the applicant has made any attempt to assess the site for wastewater disposal needs, but to this date no permit applications have been filed with the Buncombe County Environmental Health Department. The subject property is a combination of sub lots 11-13 and a portion of lot 14 according to a plat recorded in Plat Book 45, Page 102 which established the Mon Terra Subdivision in 1982. The lot itself slopes downward from Terra Drive (approximate 19% average natural slope), and a portion of the parcel appears to serve as a drainage easement for the neighborhood according to the plat mentioned above. The subject property has the potential to be subdivided, and the R-1 district does allow for two dwelling units to be built on each lot. Staff's main concerns with this rezoning request is that it represents a potential “spot-zoning” and the proposed density may not be tenable under current environmental health guidelines.

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 **not** located on a major transportation corridor but is directly accessed by Terra Drive (private) which intersects Mills Gap Road which is maintained by the NCDOT (the nearest identified major transportation corridor is Sweeten Creek Road which is approximately 1.5 miles from Mills Gap Road).
- The subject property is **not** located within the combined water/sewer service area but is currently served by public water.
- The subject property does contain a strip of land identified as steep slope (greater than 25%) parallel to Terra Drive along the edge of the road.
- The subject property is located outside of high elevations greater than 2500 feet.
- The subject property contains a negligible amount of moderate slope stability hazard area as evidenced in the exhibit map set.
- The subject property is not located within a FEMA Flood Hazard Area.

Figure 20. Appropriate Development Types of the Buncombe County Comprehensive Land Use Plan 2013 Update identifies multi-family development as “highly suggested” within reasonable proximity to major transportation corridors and within combined water/sewer service areas. The Plan “suggests” that multi-family development be located outside of steep slope areas (greater than 25%) and outside of high elevations (greater than 2,500 feet). The Plan “highly suggests” development outside of moderate and high hazard slope stability areas, and outside of FEMA flood hazard areas. The proposed map amendment would be detrimental to the owners, adjacent neighbors, and surrounding community as it **does not** meet a number of goals as identified in the Buncombe County Comprehensive Land Use Plan Update. The proposed density is incompatible with the surrounding neighborhood and is likely too ambitious to meet current septic/environmental health guidelines and has a high potential to be challenged as a “spot-zoning.” Therefore, the Buncombe County Department of Planning and Development recommends **denial** of the rezoning request as it is incompatible with the surrounding density of the established neighborhood, is not served by public sewer, is not located near a major transportation corridor, and represents the potential for a “spot zoning.”

### 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 is **not** located on a major transportation corridor but is directly accessed by Terra Drive (private) which intersects Mills Gap Road which is maintained by the NCDOT (the nearest identified major transportation corridor is Sweeten Creek Road which is approximately 1.5 miles from Mills Gap Road).
- The subject property is **not** located within the combined water/sewer service area but is currently served by public water.
- The subject property does contain a strip of land identified as steep slope (greater than 25%) parallel to Terra Drive along the edge of the road.
- The subject property contains a negligible amount of moderate slope stability hazard area as evidenced in the exhibit map set.

Figure 20. Appropriate Development Types of the Buncombe County Comprehensive Land Use Plan 2013 Update identifies multi-family development as “highly suggested” within reasonable proximity to major transportation corridors and within combined water/sewer service areas. The Plan “suggests” that multi-family development be located outside of steep slope areas (greater than 25%) and “highly suggests” development be outside of moderate and high hazard slope stability areas. The proposed map amendment would be detrimental to the owners, adjacent neighbors, and surrounding community as it **does not** meet a number of goals as identified in the Buncombe County Comprehensive Land Use Plan Update. The proposed density is incompatible with the surrounding neighborhood and is likely too ambitious to meet current septic/environmental health guidelines and has a high potential to be challenged as a “spot-zoning.” Therefore, the requested zoning would **not be reasonable and in the public interest** as it is incompatible with the surrounding density of the established neighborhood, is not served by public sewer, is not located near a major transportation corridor, and represents the potential for a “spot zoning.”

**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 located outside of high elevations greater than 2500 feet.
- The subject property is not located within a FEMA Flood Hazard Area.

Figure 20. Appropriate Development Types of the Buncombe County Comprehensive Land Use Plan 2013 Update identifies multi-family development as suggested outside of high elevations (greater than 2500 feet) and highly suggested outside of FEMA flood hazard areas. The subject property meets these criteria and therefore, the requested zoning would **be reasonable and in the public interest**.

### **Zoning Ordinance Text Amendment Analysis**

#### ***Planning Department Recommendation of Approval:***

- The proposed text amendments to:
  - Modify §78-719, Purposes in View to add clarifying language that ties adoption or rejection of zoning amendments to the comprehensive plan based on recent changes to state law adopted by the NCGA;
  - Modify §78-645(e)(3) and (4), Protected Ridge Overlay District to add clarifying language that removes references to the orientation of structures in relationship to the crest of the ridge to assist in the application of the Protected Ridge Overlay District's goals of regulating height and width of structures; and
  - Modify §78-650(c)(1)(a), Community Oriented Development to clarify and add language to the methodology for which density is calculated for Community Oriented Developments are:
  
- **Consistent with the Buncombe County Comprehensive Land Use Plan and Updates:**
  - The 2013 Update (Section 2. Plan Framework) indicates the following objectives:
    - Adjust land use policies to account for changes within the regulatory environment; and
    - Clarify existing ambiguities in land use policies and regulations.
  
- The proposed text amendments are **reasonable and in the public interest** as they would meet objectives identified in the Buncombe County Comprehensive Land Use Plan Update.