

**Buncombe County Planning Board  
March 19, 2018**

The Buncombe County Planning Board met on March 19, 2018 in the meeting room at 30 Valley Street. Members present were Gene Bell, Nancy Waldrop, David Rittenberg, Thad Lewis, Robert Martin, Dusty Pless, Parker Sloan, and Billy Taylor. Also present were Brandon Freeman, Staff Attorney; and Debbie Truempy, Gillian Phillips, Shannon Capezzali, and Savannah Gibson, Planning staff.

**Call to Order**

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

**Approval of Agenda**

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

**Approval of Minutes (February 19, 2018)**

Nancy Waldrop made a motion to approve the February 19, 2018 meeting minutes. The motion was seconded by Dusty Pless and passed unanimously.

**Subdivision Review – Preliminary Plan Approval:**

***SUB2018-00033:*** David Ross on behalf of Biltmore Terrace Development, LLC applied for major subdivision approval of 57 lots for the project identified as the Biltmore Terrace Subdivision and located on tax lot PINs 9657-75-3084, 9657-75-2418, 9657-65-9108, 9657-75-0025, 9657-74-0901, and 9657-74-1956 (Oakley Dogwood Dr. and 70 Fox Dr.)

Gillian Phillips presented the application and staff conditions to the Board. Brad Howell of Advantage Civil Engineering was present to answer Board questions. There was no one who wanted to make public comment. Dusty Pless made a motion to approve the preliminary plan with staff conditions. The motion was seconded by Billy Taylor and passed unanimously.

***SUB2018-00127:*** Paul Foster of the Cliffs Communities applied for approval of a revision to the previously approved plan for Phase 6 of the Cliffs at Walnut Cove major subdivision on tax lot PINs 9633-36-5452 and 9633-35-8301 (Split Rock Trail).

Gillian Phillips presented the application and staff conditions to the Board. Paul Foster explained the proposed changes to the Board. There was no one who wanted to make public comment. Nancy Waldrop made a motion to approve the preliminary plan with staff conditions. The motion was seconded by Parker Sloan and passed unanimously.

**Public Hearing – Zoning Map Amendment:**

***ZPH2018-00011:*** Jesse Garner has applied to rezone two (2) parcels identified as tax lot PINs 9678-28-3117 and 9678-26-7935 (1592 and 1598 Tunnel Rd) which are currently zoned Residential (R-2) to Employment (EMP).

Debbie Truempy presented the rezoning application (Attachment A) and staff analysis (Attachment B). The Planning Department recommended denial of the rezoning request as it represents a potential spot

zoning and is inconsistent with the Comprehensive Land Use Plan. Jesse Gardner of Civil Design Concepts presented the application and answered questions from the Board. Aerial and zoning maps, and excerpts from the UNC School of Government (Attachment C) were provided to the Board by the applicant. Gene Bell opened the meeting to public comment.

- Cecil Harris, a nearby property owner, expressed concern about future maintenance for the shared road, noise from the proposed landscaping business, and environmental impacts to the area's well and creek water from commercial development. He also expressed concerns about the view and impacts to the nearby cemetery.
- Dennis Brigman, a nearby resident, expressed concern about traffic and stated he does not support the rezoning.
- Chris Bradford, a nearby property owner, expressed concern about water runoff, environmental impacts, and noise.
- James Mann, a nearby resident, expressed concern about traffic, safety, and increasing property taxes.
- David Ruffle, a nearby resident, expressed concern about increasing property taxes.
- Thomas Gibson, a nearby resident, stated that he supports the rezoning request as the corridor is appropriate for commercial development.
- Carissa Bradford, a nearby resident, expressed concern about the impacts of commercial development and use of chemicals by the proposed landscaping business.

Jesse Gardner stated that the Board should be considering the type of zoning, and not consider statements related to the landscaping business specifically.

Gene Bell closed the public comment period. David Rittenberg made a motion to recommend denial of the rezoning request as it is inconsistent with the Buncombe County Land Use Plan, and represents a spot zoning. The motion to recommend denial was seconded by Robert Martin and passed unanimously.

#### **Public Comment**

None

#### **Adjourn**

The meeting was adjourned at 10:32 a.m.

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

CASE NUMBER:	ZPH2018-00011
PROPOSED ZONING CHANGE:	R-2 to EMP
LOCATION:	1598 & 1592 Tunnel Rd.
PIN(s):	9678-28-3117 & 9678-26-7935
APPLICANT:	Jesse Gardner
OWNER:	Thelma W. King

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 parcel and a portion of a second parcel totaling approximately 8.33 acres currently zoned Residential R-2 to Employment (EMP). The parcels are located at 1598 and 1592 Tunnel Road and each parcel currently contains a single family home with direct access to US 70 Highway. The properties to the West contain single family residences or are vacant and zoned R-2. The properties to the East contain a cemetery, single family residences, or are vacant and zoned R-2. Properties to the North contain single family residences and are zoned R-1. To the South, across US 70 Highway are the railroad and Interstate 40. The historic and contiguous nature of the neighborhood consists of older estate lots and smaller parcels that are separated from nearby commercial/industrial uses by a transportation corridor and the railroad. The nearest commercial use on the north side of Tunnel Road is six parcels to the east at the intersection of Small Mountain Drive.

Staff's main concerns with this rezoning request are that it represents a potential "spot-zoning" as the parcels are not adjacent to an EMP District and that it would permit commercial/industrial intrusion into a single-family residential neighborhood.

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 located on an identified transportation corridor.
- The subject property is located within the combined water/sewer service area.
- The subject property does contain areas identified as steep slope (greater than 25%).
- The subject property is located outside of high elevations greater than 2500 feet.
- The subject property does contain a small amount of moderate slope stability hazard area.
- 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 commercial and manufacturing development as "highly suggested" within

reasonable proximity to major transportation corridors, within combined water/sewer service areas, outside of steep slope areas (greater than 25%), outside of high elevations (greater than 2,500 feet), and outside of moderate and high hazard slope stability areas. The Update also “highly suggests” that commercial development and “suggests” that manufacturing development be separated from low-density residential uses. The Update further “suggests” commercial and manufacturing development be located 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, would permit commercial/industrial intrusion into a single-family residential neighborhood, and represents a potential “spot-zoning”. Therefore, the Buncombe County Department of Planning and Development recommends **denial** of the rezoning request as it is incompatible with the surrounding single-family residential neighborhood, contains areas identified as steep slope (greater than 25%), contains a small amount of moderate slope stability hazard area, and has a high potential to be challenged as 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 does contain areas identified as steep slope (greater than 25%).
- The subject property does contain a small amount of moderate slope stability hazard area.

Figure 20. Appropriate Development Types of the Buncombe County Comprehensive Land Use Plan 2013 Update identifies commercial and manufacturing development as “highly suggested” outside of steep slope areas (greater than 25%) and outside of moderate and high hazard slope stability areas. Additionally, the Update “highly suggests” that commercial development and “suggests” that manufacturing development be separated from low-density residential uses. 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, would permit commercial/industrial intrusion into a single-family residential neighborhood, and represents a potential “spot-zoning”. Therefore, the requested zoning would **not be reasonable nor in the public interest** as it is incompatible with the surrounding single-family residential neighborhood, contains areas identified as steep slope (greater than 25%), contains a small amount of moderate slope stability hazard area, and has a high potential to be challenged as 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 on an identified transportation corridor.
- The subject property is located within the combined water/sewer service area.
- 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 commercial and manufacturing development as “highly suggested” within reasonable proximity to major transportation corridors, within combined water/sewer service areas, outside of high elevations (greater than 2,500 feet), and outside flood hazard areas. The proposed map amendment would not be detrimental to the owners, adjacent neighbors, and surrounding community as it **does** meet a number of goals as identified in the Buncombe County Comprehensive Land Use Plan Update. Therefore, the requested zoning would **be reasonable and in the public interest**.



Buncombe County Government  
Application to Amend the Buncombe County Zoning Map

Planning and Development  
www.buncombecounty.org

46 Valley Street  
Asheville, NC 28801  
Telephone (828) 250-4830  
Fax (828) 250-6086

**OFFICE USE ONLY:**

Case Number: ZPH 2018-00011 Date Received: 2/16/18  
Scheduled Planning Board Hearing Date: 3/19/18

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:

**Property description:**

- Property Identification Number(s): 9678 28 3117 9678 26 7935
- Address(es) of Property: 1598 TUNNEL ROAD; 1592 TUNNEL ROAD
- Total Acreage of Property: 1/4 16AC

**Zoning Classification(s):**

Current zoning district(s): R-2 Requested zoning district(s)\*: EMP

*\*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.*

**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:

THE 1/4-16AC PARCEL

IS ADJACENT TO EMP AND US 70 ROADWAY MAKE IT SUITABLE FOR THE PROPOSED ZONING CLASSIFICATION.

2. Describe how the proposed rezoning is consistent with Buncombe County's Comprehensive Land Use Plan (available at www.buncombecounty.org/planning):

LAND USE PLAN SUGGEST COMMERCIAL USE ALONG MAJOR CORRIDOR WHICH US 70 MATCHES.

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.

PROPOSED ZONING IS IN KEEPING WITH MIX OF USES ALONG US 70 WHICH IS REASONABLE AND THUS SHOULD HAVE NO NEGATIVE IMPACT ON PROPERTY OWNERS AND SURROUNDING COMMUNITY

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

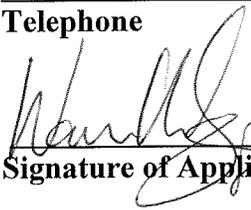
*If the applicant(s) listed below are not the owner(s) as listed within the Buncombe County Tax Records, North Carolina General Statutes require the applicant to certify that the owner(s) received notice for each public hearing. An owner's affidavit should be submitted with this application, and certification 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.*

**Contact information:**

JESSE GARNER  
Applicant Name(s) (please print)

1108 PATTON AVE, ASHEVILLE, NC 28801  
Mailing Address (including town/city, state, and zip)

Telephone \_\_\_\_\_ Email Address jgarnet@cdco.com

 FOR JESSE GARNER  
Signature of Applicant \_\_\_\_\_ Signature of Applicant \_\_\_\_\_

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

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

*Withdrawal of an application after notice has been made will result in forfeiture of any application fees associated with said application.*



Application to Amend the Buncombe County Zoning Map:
Owners' Affidavit

Planning and Development
www.buncombecounty.org

46 Valley Street
Asheville, NC 28801
Telephone (828) 250-4830
Fax (828) 250-6086

OWNERS' AFFIDAVIT

The persons listed below do hereby appear before a Notary Public and affirm that they are the legal owners of the property located at:

1598 Tunnel Road & 1592 Tunnel Road, Asheville, NC 28805

PIN(s) # 967828311700000 & 967826793500000

The persons listed below do hereby give authorization and permission to:

Jesse Gardner of Civil Design Concepts
(Name of Representative/Agent) (Name of Organization)

to submit to Buncombe County a request to amend the zoning map for the above listed properties from:

Current zoning district: R-2 Requested zoning district: EMP

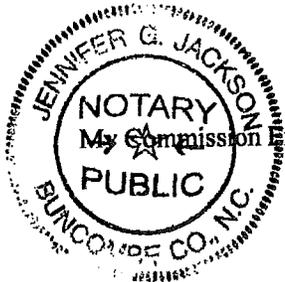
This application will be submitted to be heard by the Planning Board in a public hearing on
, 20 and to be subsequently heard by the Commissioners.

Table with 3 columns: Owner's Name (Print), Owner's Signature, Date. Row 1: Thelma King Rev Trust by James A. Lee Trustee, [Signature], 2-14-18

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, Jennifer G Jackson, a Notary Public of the County and State aforesaid, certify that
James A Lee, PROPERTY OWNER, personally appeared before me this day and voluntarily
acknowledged the due execution of the foregoing instrument.

Witness my hand and official stamp or seal, this the 14 day of February, 2018



[Signature]
Notary Public

