

**Minutes of the Planning Board  
Regular Meeting - Electronic  
September 14, 2023**

**Members Present:** Jim Robertson (Chair), Yolanda Robinson, Andrea Martin, Peter Hanley, Neil Brown, Tamara Peacock (Vice-Chair), Beth Robertson, Donna Waters

**Members Absent:** Barbara Cromar

**Staff Present:** Matthew Manley, Planner III/Strategic Projects Manager and Tyler Morrow, Planner II, Lew Holloway, Community Development Director (Zoom)

**I Call to Order.** *The Chair called the meeting to order at 4:00 pm. A quorum was established.*

**II Approval of Agenda.** *Mr. Hanley moved to approve the agenda. The motion was seconded by Ms. Robinson and passed unanimously.*

**III Approval of Minutes for the meeting of August 10, 2023.** *Mr. Brown moved to approve the Planning Board minutes of the meeting of August 10, 2023. The motion was seconded by Mr. Hanley and passed unanimously.*

**IV Old Business**

**V New Business**

Chair talked about the Gen H survey and asked the folks in the room to participate in the survey.

**V(A) Administrative Review (Preliminary Site Plan and Plat) – 1202 Greenville Highway Townhome project (A23-59-SPR) (A23-60-MAJ SUB).** Mr. Morrow gave the following background:

The City of Hendersonville is in receipt of an application for preliminary administrative site plan review for the 1202 Greenville Highway Townhome project at 1202 Greenville Highway. Mr. Morrow stated this is an administrative review and the term administrative is defined as decisions made in the implementation, administration or enforcement of the Zoning Ordinance that involve the determination of facts and the application of objective standards in the Zoning Ordinance.

Mr. Morrow stated these are two separate applications but he has combined it into one presentation. The Board will need to make two decisions on it and there will be two separate motions when the time comes.

Mr. Morrow stated there are two administrative reviews tonight, he explained the process and the role of the Planning Board in this review. The Planning Board's role in the review is to ensure that the preliminary site plan and plat meets all applicable requirements. If the project meets all the applicable requirements, then the Planning Board must grant approval. The Planning Board can determine three possible outcomes; approval of the preliminary site plan as presented, approval of the preliminary site plan with conditions, or the Planning Board can vote to deny the application but must provide the reasoning for denial and specifically state which sections of the ordinance are not being met which must be included in the denial motion.

Mr. Morrow explained this review. He stated Preliminary plan review is required of all developments adding more than 30 parking spaces. Preliminary site plans must be reviewed by the Planning Board. Planning Board must administratively review the preliminary site plan to ensure compliance with the zoning ordinance. Approval of a preliminary site plan shall not entitle the applicant to the issuance of a zoning compliance permit. The developer will be required to submit final site plan to staff for review. This project would retain the current zoning of GHMU if approved.

Mr. Morrow stated this project also requires a major subdivision. Major Subdivisions include all divisions of land involving eight or more lots; and/or involve the dedication of a new street or change in existing streets. The Planning Board must review and issue an administrative decision regarding the preliminary plat's compliance with the Subdivision Ordinance. The Planning Board's decision shall not constitute the final approval for recording a subdivision with the Register of Deeds, or approval for the conveyance of lots.

A background of the project was given in the presentation and is included in the staff report.

The current Zoning and Land Use Map was shown and is explained in the staff report.

Site photos were shown and are included in the staff report. These are from the original submittal from the meeting in March.

Mr. Morrow explained the previous project proposal. The information is included in the staff report and the presentation. The Planning Board recommended denial of this project in March and the application for the CZD was withdrawn by the applicant.

The preliminary site plan was shown and is included in the staff report and presentation. Mr. Morrow explained the site plan requirements concerning sidewalks, roads, rights-of-way and wetlands. There were no outstanding comments for the preliminary site plan.

Mr. Morrow stated based on the review by staff, the submitted preliminary site plan for the 1202 Greenville Highway Townhome Project meets the Zoning Ordinance standards established for Greenville Highway Mixed Use (Section 5-22) and Preliminary Site Plan Review (Section 7-3-3.2).

The preliminary plat was shown and is included in the staff report and presentation. The preliminary plat comments were discussed and are included in the staff report and presentation.

Mr. Morrow stated based on the review by staff, the submitted preliminary plat for the 1202 Greenville Highway Townhome Project generally meets the Subdivision Ordinance standards established for Major Subdivisions (Section 2.04 H). Mr. Morrow discussed the conditions to the plat and these conditions are included in the staff report.

Chair asked if there were any questions for staff.

Mr. Brown asked what the fee in lieu of the public parkland would be. Mr. Morrow stated the fee is based off of the value of the land. He believes the Subdivision Ordinance bases it off of the land appraisal. Chair stated it would be based on the value of little over half an acre for this property. Chair asked if that was before or after the infrastructure is built. Mr. Manley stated it says after the subdivision. .

There were no further questions for staff.

Chair stated before he brings the applicant up does anyone have any questions for the applicant? This is a site plan review and this is an administrative process. City staff has gone over this to make sure it meets two different ordinances, the Zoning Ordinance and the Subdivision Ordinance. Staff showed what they

found including the street with too sharp of a bend and they can put a stop sign on either corner and eliminate that problem. Mr. Morrow pointed out the intersection and stated it currently does not meet the radii for a public street but the applicant is proposing to make that a stop condition, like what you see on Williams Street where you have a sharp curve with two stop signs. But with stop conditions these are public streets so that does have to be reviewed by the Public Works Department. You would either have the corrected radii or a stop conditions which would be required to meet public street standards and that is how the condition is written. That kind of design detail would come during final site plan approval on which would be the better option and on the Subdivision Ordinance also requires that the streets be named by the time it comes to the Board. The streets have not been named so that also is encompassed with that as well.

Ms. Peacock asked if they did dedicate half an acre for park space would it come out of their open area that is right now at a minimum on their site plan. Mr. Morrow stated he thinks the way it is written it can come from general open space, that is how it is determined. Mr. Manley stated he does not know if they have determined that. Mr. Morrow stated since it is not being currently shown, staff would have to figure out how that is worked out. They were not able to pull out where this area would be located. Mr. Manley stated since it is not clear they would have to make an administrative decision, an interpretation on whether open space can be dedicated as a public park. It is under review right now.

Mr. Hanley asked if NCDOT would provide input on the ingress and egress. Mr. Morrow stated correct, they would have to get driveway permits from NCDOT.

Mr. Brown asked about there being no vegetation in the middle of this development. Mr. Morrow showed the landscape plan and explained the landscaping.

Discussion was made on the wetlands.

Ms. Flores asked about the percentage of trees being removed and what is to stay. Mr. Morrow stated he currently does not know.

Chair asked if there were any questions for the applicant. There were no questions for the applicant.

Chair stated they would move to public comment. He stated the Board has two legislative items on the agenda which are text amendments and he asked that if you come up and speak it needs to be related to why this project does not meet one of the ordinances, the Zoning Ordinance or the Subdivision Ordinance. This development is allowed to put the 50 homes on the property as long as they meet all the requirements.

Brian Gulden, Attorney with Van Winkle Law Firm stated the applicant is here to answer any question you may have and he appreciates the explanation of the administrative decision which gives this Board very little leeway. He is also happy to answer any questions. The agent for the property, himself and Warren Sugg, the engineer are all here.

Eric Minduski stated he was the agent for Lock 7 Development. He stated they started working on this project in August of 2022. They had originally proposed 185 apartment units in three story buildings which had been going through the conditional zoning process, had a Neighborhood Compatibility meeting, gone before Tree Board, had a TIA conducted and spoke with Council members to get their opinion on the project. The most common feedback was increased traffic, stormwater concerns, the project being too tall and too dense, the impact to wildlife and not enough parking. The majority of the comments had to do with the scale of the project. Based on all that feedback they decided the best recourse was to withdraw that project. They reworked the project to be more compatible with the surrounding context. They scaled the project down with most every aspect and worked with Planning staff to ensure that it was a better fit for the

community. That is what they are coming to you with today. These townhomes will be two stories in height and each will have a one car garage as well as a dedicated parking spot in the driveway. He discussed the amenities being green space, walking trail, dog park etc. They feel this project is overall more compatible with the surrounding neighborhood. They scaled the project down 70% and went from 185 units to 50 units and that decrease in density will also lessen the traffic impact, which was the number one concern from the previous proposal. They did have a TIA with the 185 units and it was found there would be no negative impact with the 185 units so taking it down to 50 units they are pretty confident there will be minimal impact. As far as stormwater concerns they have increased the pervious area from 3.4 acres to 4.5 acres, that is 49% to 65%. That also includes more habitat for the wildlife in addition to the perimeter tree buffer they are maintaining from the last plan. They are decreasing the height from three stories to two stories. They have increased the parking from 1.3 spaces per unit to 2 spaces per unit. These changes are from the feedback from Council members, the Planning Board and the community. He thanked the Planning staff and the community.

Ken Fitch (Zoom) 1046 Patton Street stated the previous proposal was rejected because it was out of character with the area now this proposal is somewhat smaller but equally intrusive and incompatible in which serious issues still remain. He discussed the dedication of parkland and the fee in lieu. He was concerned about the loss of green space. He discussed the preservation of some national parks not being accessible but serving as a habitat for wildlife and being essential to communities.

Chair stated when speaking make a reference to why this does not meet the ordinance.

Lynne Williams, Chadwick Avenue stated the neighbors spoke out against the first proposal and the Planning Board denied it now and this time their hands are tied. This is a loss of animal habitat and beautiful historic forest. Things that are not in compliance there was talk about encroachment on the stream buffer. It says it is for sewer but it is right into the stream. There is no public park space designation and we ask for the public park space to be designated preferably to preserve more trees. If the developer would decrease the footprint and increase the buffer this would greatly reduce the impacts on the neighborhood. As far as the Subdivision Ordinance goes, the roads are not in compliance. The turning radius is not in compliance so no large vehicles can turn around. The connectivity to Garden Lane is not realistic. It is a private road which could put stress on the neighborhood. The parking is inadequate. Yes, it is within the Zoning Ordinance requirements but where is all the overflow parking going. She submits for the record the previous public comments that are on file as well as the comments from the NCM and the previous comments from the Planning Board meeting and today's comments. She stated they need Lock 7 to be a good neighbor even though the developers will not be living here.

Chair asked if there was anyone else on the call that would like to speak named Gayle. There was no one else on the call.

Chair closed public comment.

Chair stated he is a little concerned about there not being a dedication yet. There are provisions for a dog park that might be a benefit for the Brookdale community. How much land is back there? It is going to require 25,000 sq. ft. He discussed there being a little over half an acre and does this come away from the open space. Ms. Peacock stated when she worked on site plans whatever you dedicate, you do upfront and then you do your site plan calculations after. They would have to do it the way the Subdivision Ordinance is written it is more of a legal question than a standard of design.

Chair reopened the public comment.

Sandra Williams, Chadwick Avenue asked if the entrance was on Greenville Highway. Chair stated it is on Greenville Highway. There are two entrances and exits. She asked if they would exit onto Greenville

Highway. Chair stated yes and that is a NCDOT issue and not a Planning Board issue. She discussed the traffic issues and Greenville Highway being a historic highway. Chair stated it is a state maintained road and a major thoroughfare. She was also concerned about the safety of children and school buses.

Chair closed public comment. And stated the dedication is one of his concerns. He stated there is a fee in lieu option and he is not sure that has to be decided today. Mr. Brown was also concerned about the dedication and thought it should be decided on. Chair stated City staff can work that out. Mr. Brown stated this plan is why they need an improved city Tree Ordinance. Chair stated the Tree Board is working on an ordinance and he knows how ordinances work. Mr. Brown stated he wasn't convinced the fees in lieu of are being deployed appropriately and that is why he has a real problem going forward without a firm dedication of public land (3.09).

Ms. Peacock asked the developer what their intentions are.

Warren Sugg, Civil Design Concepts stated there is an open space of 40% and a common open space of 10% and that equals 50% of the site. There is 50% of the site that is available to do whatever they like. They have asked staff and staff is still evaluating how to dedicate and where to dedicate. He doesn't know that it is clear in the code or clear in the comments thus far. They are not opposed to dedicate it is just that no one knows where to dedicate. Ms. Peacock stated so your intention is to dedicate and not to do fee in lieu. Mr. Sugg stated yes, they have land there, they just need to know where to put 25,000 sq. ft. Is it all in one spot, is there a minimum length, can it be close to something, does it have to have a public access? There are a lot of questions that need to be answered. He doesn't think there is an opposition to it, he just doesn't think it is clear where it needs to be. They are planning to work with city staff on where to put it. He has already had conversations with Mr. Morrow. Ms. Peacock stated they could make that a condition on the motion. Mr. Brown stated if they make that a condition can it be flipped to a fee in lieu? Chair stated City Council gets the final decision on that. Mr. Brown stated City Council does not weigh in on this. Chair stated on the dedication of land they get the final say so, on whether they want that land to be dedicated to them or they want payment in lieu. Is that correct? Mr. Gulden stated according to the City Attorney that is correct. He stated the Board can approve this with conditions that they have to comply with 3.09 for the dedication of public land and if the city decided they don't want it, then it's a fee in lieu.

Chair stated there was discussion on an encroachment on the stream buffer. Mr. Minduski stated that is where the sewer manhole is tied in. Chair stated they are allowed utilities but no other disturbance. Mr. Minduski stated yes and they have a storm out in that location as well.

Discussion was made on the right-of-way and widening of Greenville Highway and how this would affect the public land. Mr. Gulden explained the condemnation of land. Mr. Morrow also explained that the parkland itself would be its own separate parcel so it would not be in the right-of-way, it would be its own parcel that the city would then own and maintain as a public park. It basically would be subdivided out and given to the city. Mr. Morrow stated this is the first time a piece of land has met the requirements for a dedication of public land and they are working through it with legal staff. Mr. Manley stated staff is trying to figure out with the plan showing open space and common open space, can part of that open space requirement be counted as the parkland.

***Ms. Peacock moved the Planning Board grant preliminary site plan approval, based on the requirements of the City of Hendersonville Zoning Ordinance (with primary consideration of sections 5-22 Greenville Highway Mixed Use and 7-3-3 Review of Preliminary Site Plans) for the 1202 Greenville Highway Townhome project. Mr. Hanley seconded the motion which passed unanimously.***

***Ms. Peacock further moved that the Planning Board grant preliminary plat approval based on the requirements of the City of Hendersonville Subdivision Ordinance (with primary consideration of section 2.04 h Major Subdivision), for the 1202 Greenville Highway Townhome project subject to the following conditions: All proposed streets shall meet all applicable requirements for local streets in accordance with the subdivision ordinance. The development shall meet all requirements for public parkland in accordance with section 3.09, whether being through dedication or the payment of a fee in lieu. Mr. Hanley seconded the motion which passed 6 in favor and 2 opposed. The opposing votes were Ms. Waters and Mr. Brown. The dissenting votes were based on the parkland dedication (Section 3.09). The motion passed.***

*Mr. Morrow explained the option of fee in lieu to the Board and the review process for this.*

Ms. Peacock left at 4:55 pm.

**V(B) Zoning Text Amendment – Mobile Food Vendor Updates– (P23-50-ZTA).** Mr. Morrow gave the following background:

This is a city-initiated text amendment brought to you by city staff for mobile food vendors. We currently have an ordinance but are just updating it. Staff is proposing a new approach to mobile food vendors.

Mr. Morrow gave a complete overview and analysis for the text amendment. This is included in the staff report.

Staff recommended changes were explained and defined and are included in the staff report and presentation. Setbacks, landscaping requirements, and signage were discussed.

Staff rationale for the changes were discussed and are included in the staff report.

The Legislative Committee met on August 15, 2023. Meeting takeaways were: Supportive for proposal. Recommended adding language to exempt mobile food vendors associated with special events. Recommended reducing the setback for mobile food vendors and permanent structures. Supported allowing mobile food vendors to operate within 100' of residential with hours of operation stipulation. Adding language that mobile food vendor sign illumination shall be downward facing.

The current Comp Plan does not touch on mobile food vendors once. He looked through the Comp Plan and tied some sections to mobile food vendors. The Gen H Comprehensive Plan will tie in mobile food vendors.

Comprehensive Plan Consistency was discussed and is included in the presentation and staff report.

General amendment standards were discussed and are included in the staff report.

A draft consistency statement is included in the staff report.

Rationale for approval and denial were included in the staff report.

Chair asked if there were any questions for staff.

Ms. Flores asked what would happen if ownership changes. Mr. Morrow stated as long as the use doesn't change there would be no problem. As long as the use doesn't change and they are still doing that same use the zoning compliance permit would still be active. Chair stated if a property transfer happened it would still stay with the property. Mr. Morrow stated it all depends on accessory verses principal use.

Mr. Brown asked about not being located within 100 feet of a residential structure unless certain times. Is this the first time we have used time frames. Chair stated no, the animated sign ordinance has time limits.

Discussion was made on the distance from combustible materials. Mr. Morrow stated he thought that was for external, such as there would a distance requirement for an external propane tank.

Chair stated he would open public comment. There was no one in the room that wanted to speak. No one on zoom spoke.

Chair closed public comment.

**Mr. Brown moved the Planning Board recommend City Council adopt an ordinance amending the official City of Hendersonville Zoning Ordinance, Section 16-4-17 Mobile food vendor, Section 8-1-1 Exceptions to setback regulations, Section 13-1-10- Supplementary standards for mobile food vendors, and Section 13-1- 11- Noncommercial messages, based on the following:**  
**1. The petition is found to be consistent with the City of Hendersonville 2030 Comprehensive Plan based on the information from the staff analysis and the public hearing, and because:**  
**The petition aligns with the Comprehensive Plan's Strategy LU-3.5. of minimizing negative impacts from growth and land use changes on existing land uses by reflecting current and ongoing trends in the community concerning mobile food vendors. 2. We find]this petition, in conjunction with the recommendations presented by staff, to be reasonable and in the public interest based on the information from the staff analysis and the public hearing, and because: 1. The proposed text amendment creates flexibility for property owners and mobile food vendor operators while still limiting potential impacts to the greater community. 2. The proposed text amendment reflects real world conditions and potentially allows non-conforming mobile food vendors to come into compliance. 3. The proposed text amendment reduces duplicated standards and focuses primarily on zoning/site specific requirements. Mr. Hanley seconded the motion which passed unanimously.**

**VI(C) Zoning Text Amendment – Transportation Standards in CHMU (P23-51-ZTA).** Mr. Manley gave the following background:

Mr. Manley stated this is an application from the City of Hendersonville as it is a staff initiated text amendment. This is to add transportation standards to the CHMU, Commercial Highway Mixed Use zoning district. The rationale for this text amendment is for improved connectivity; reduced congestion; improved vehicular, pedestrian and bicycle circulation; supported by Comprehensive Plan & aligns with HMU Standards.

The CHMU zoning was created for the Upward Road corridor. This corridor has experienced significant growth in the last three years. No other area has seen this scale of development requests in the city. It was designated as a boulevard in the 2030 Comprehensive Plan. Mr. Manley explained the recommended changes and the reasons for them.

Photos of existing connections were shown and included in the staff report.

Photos of potential connections were shown and included in the staff report.

Mr. Manley discussed inner connectivity.

This zoning text amendment was ranked as the second highest priority in the 2022-2024 Text Amendment Priority List.

The Legislative Committee met on June 20, 2023. There were some recommended clarifications made.

Staff recommend changes were discussed including adding a new section in the zoning ordinance. This is included in the prestatation and staff report.

Comprehensive Plan Consistency was discussed and included in the staff report and presentation.

General rezoning standards were discussed and are included in the staff report and presentation.

A draft consistency statement was shown and included in the staff report.

Draft rationale for approval and denial was included as well and is in the staff report.

Chair asked if there were any questions for staff. There were no questions.

Chair explained connectivity and not having to pull out onto the major thoroughfare to get to different businesses.

Chair opened the meeting for public comment. There was no public comment.

Chair closed the public comment.

***Ms. Flores moved the Planning Board recommend City Council adopt an ordinance amending the official City of Hendersonville Zoning Ordinance, Article V. – Zoning District Classifications, Section 5-27 CHMU Commercial Highway Mixed Use Zoning District, based on the recommendations presented by staff and based on the following: 1. The petition is found to be consistent with the City of Hendersonville 2030 Comprehensive Plan based on the information from the staff analysis and the public hearing, and because: The petition aligns with Goal TC-3 of the Transportation and Circulation Chapter of the Comprehensive Plan which calls for providing a safe and efficient roadway system that meets adequate vehicular level-of-service requirements in order to support business activity and residential quality of life. We find this petition to be reasonable and in the public interest based on the information from the staff analysis and the public hearing, and because: 1. The text amendment would help address access management, congestion management and transportation circulation in the Upward Road corridor. 2. The text amendment will impact a rapidly growing area of the City. Mr. Hanley seconded the motion which passed unanimously.***

VI Other Business.

VII Adjournment – *The meeting was adjourned at 5:54 pm.*

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Jim Robertson, Chair