

MEMORANDUM

TO: Board of Adjustment Members

FROM: Community Development Department

DATE: July 21, 2022 (Board of Adjustment Special Called Meeting)

RE: Special Use Application –City of Hendersonville – FS1

SUMMARY: The Community Development Department has received an application and preliminary site plan from the City of Hendersonville for a Special Use Permit (Exhibit A). The subject property is currently zoned C-2, Secondary Business. The Special Use requested is Public Utility Facilities under Section 5-9-2 of the Zoning Ordinance.

SPECIAL USE REQUEST: The Special Use requested is Public Utility Facilities under Section 5-9-2 of the Zoning Ordinance.

PROPOSED FINDINGS OF FACT:

- The subject property possesses a PIN of 9568-79-4916 and located at 851 N. Main St.
- The subject property is zoned as C-2 Secondary Business.
- Public Utility Facilities is a Special Use (subject to 16-4 supplementary standards) in C-2 Secondary Business.
- Based on Henderson County Records, a North Carolina General Warranty Deed between Hendersonville Board of Education (Grantors) and The City of Hendersonville (Grantee) was recorded June 23, 1993. (Exhibit B)
- The subject property is the current location of the City of Hendersonville Fire Station 1.
- Based on Henderson County records, the lot size is approximately 1.67 acres or 72,745.2 square feet.
- The applicant submitted a Preliminary Site Plan for the construction of the new Fire Station 1. (Exhibit C)
- Section 10-8-2 of the Zoning Ordinance requires that the preliminary site plan meet the requirements set out in this section.
- The applicant submitted 3D renderings of the new Fire Station 1. (Exhibit D)
- The Preliminary Site Plan for the Fire Station 1 meet the requirements of Section 10-8-2.
- The Preliminary Site Plan Fire Station 1 does not meet subsection (d) of the Supplementary Standards in Section 16-4-22 Public Utility Facilities.
- Alternative compliance is being requested for a reduction in the size of the required planting islands for parking lot trees. The tree islands are proposed to be 8’x20’ as an alternative to the required 18’x18’. Condition c) under Section 15-3 is satisfied with the provision of pervious pavers in lieu of asphalt throughout the parking area. This

will allow for sufficient water to drain to the roots of the parking lot trees without the need for the conventional-sized tree island. (Exhibit E)

CODE REFERENCES.

5-9-2 Special Uses: The following uses shall be permitted in the C-2 Secondary Business Zoning District Classification only upon issuance of a Special Use pursuant to Article X and shall be subject to Special Use requirements contained in Section 16-4, below:

- Bed & breakfast facilities
- Child care centers
- Civic clubs & fraternal organizations
- Pet-sitting
- Public utility facilities
- Restaurants

Section 12-2 Definition of Commonly Used Terms and Words.

Public Utility Facility: Any structure or facility transmitting a service provided by a government or public utility, including, without limitation, fire stations, emergency medical service centers, telephone and repeater stations, pumping substations, and water towers, but not including telecommunication towers, antennas, and other telecommunication devices.

16-4-22 Public Utility Facilities.

- a) Lots must conform to minimum setback and yard requirements of the district in which they are located. Unstaffed utility structures with internal floor space of less than 600 square feet are exempted from the minimum lot size requirement.
- b) Electric and gas substations and sewage treatment plants will be separated by a ten-foot B type buffer meeting the specifications of Article XV from the street and any abutting residential use or any property located in a residential zoning district.
- c) Control houses, pump and lift stations, and other similar uses shall be screened from the street and any abutting residential use or any property located in a residential zoning district.
- d) A fence not easily climbable or comparable safety devices must be installed and maintained in order to deter access to the facility.
- e) The design of buildings, structures and facilities on a site should conform as closely as possible to the character of the area or neighborhood.

- f) The facility's lighting shall be shielded to prevent light and glare spill-over on to any adjacent residential properties, if such exist.
- g) The Board of Adjustment may give relief from these requirements so long as public safety and neighborhood compatibility are protected, if strict adherence could constitute a hardship or is unnecessary.

Section 10-8 Special Use Permits. A Special Use Permit from the Board of Adjustment is required for all Special Uses.

10-8-1 Application. When a Special Use Permit is required by the terms of this

Ordinance, application for such permit, along with a fee established by resolution of City Council, shall accompany the application for a building permit.

10-8-2 Preliminary Site Plan. The application for a Special Use Permit shall be accompanied by seven copies of a preliminary site plan showing the following:

- a) The proposed title of the project and the name of the engineer, architect, designer, landscape architect, planner and/or licensed surveyor, developer and owner of record;
- b) The north arrow point, scale at not greater than one inch equals 40 feet, and such information as the names of adjacent roads, streams, railroads, subdivisions or other landmarks sufficient to clearly identify the location of the property;
- c) Location of site by an insert vicinity map at a scale no less than one inch equals 2,000 feet;
- d) Existing project zoning and zoning of adjacent property, to include properties abutting either side of a public right-of-way; City of Hendersonville Zoning Ordinance
- e) City limits line;
- f) Names of adjacent property owners;
- g) Boundary survey of site and the location of all existing easements, buildings, rights-of-way or other encroachments;
- h) Existing topography and proposed finished contours at not more than five feet intervals, with project bench mark clearly identified. Location of the 100 year floodplain, if applicable. Other significant natural features affecting the site including but not limited to marshes, major rock outcrops and lakes or streams;

- i) All proposed streets with proposed names, pavement widths and rights-of-ways. All alleys, driveways, curb cuts for public streets and handicap ramps, loading areas, and provisions for off-street parking spaces and sidewalks; calculations indicating the number of parking spaces required and the number provided. All streets shall be clearly identified as public or private; a typical cross-section of the public or private street shall be included;
- j) Preliminary utility layout including location and size of existing and proposed water, sanitary and storm sewer lines; proposed location of electrical transmission lines, gas pipelines, street lights, fire hydrants and the location of garbage disposal facilities or a note indicating arrangements for these facilities;
- k) Location and size of all entrances and exits to the site showing sight distances and their relationship to all street and driveway intersections within 25 feet for driveways and 200 feet for street intersections;
- l) A landscape plan showing wood line before site preparation with species and average diameter of trees indicated and areas to be screened, fenced, walled and/or landscaped; also location of buffer strips, if required;
- m) Proposed location and intended use of all buildings with their dimensions, the number of floors, total floor area and maximum height above lowest ground point of each building;
- n) Notations to include the total project area, the amount and percentage of the site to be covered by buildings, open space, streets and parking;
- o) General location, size, height, orientation, and appearance of proposed signs.

As a matter of discretion, the Administrative Officer may require additional items for preliminary site plans, which would be necessitated by conditions such as topography, location, and anticipated traffic volumes on or near the site. The requirements may include but not be limited to traffic, noise, visual or fiscal impact studies, architect's models, renderings and other studies or data. In addition, if the Administrative Officer determines that one or more of the above submittal requirements is not applicable to the proposed project, it may be waived.

Upon receipt of an application and site plan, the Administrative Officer shall review same to determine if all required information has been provided or if additional information is needed. If the site plan is insufficient, the Administrative Officer shall notify the applicant in writing of such deficiencies. An application for a Special Use Permit will not be scheduled for Evidentiary Hearing until such time as the Board of Adjustment is in receipt of a complete application and site plan, that is, an application and site plan containing all the information required under this Ordinance. City of Hendersonville Zoning Ordinance.

10-8-3 Evidentiary Hearings on Applications for Special Use Permits. Once the Administrative Officer is in receipt of a complete application and seven copies of a complete site plan, the Administrative Officer will schedule the application for an Evidentiary Hearing before the Board of Adjustment.

The Administrative Officer shall mail or deliver written notice of the public hearing to the person or entity whose application or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the zoning ordinance. In the absence of evidence to the contrary, the city may rely on the county tax listing to determine owners entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the city shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

The Board of Adjustment shall conduct an Evidentiary Hearing (quasi-judicial hearing) on the application. Per NCGS 160D-406 (d), the applicant, the local government, and any person who would have standing under NCGS 160D-1402(c), shall have the right to participate as a party at the Evidentiary Hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the board.

10-8-4 Board of Adjustment Action on Applications for Special Use Permits. After the Evidentiary Hearing, and on consideration of the record, the Board of Adjustment shall take action on the application, either (1) denying it, (2) approving it, or (3) approving it subject to one or more reasonable and appropriate conditions. The Board of Adjustment shall not approve an application for a Special Use Permit, with or without conditions, unless it makes each of the following findings of fact:

- a) The proposed use complies with the standards for such use contained in Article XVI;
- b) The proposed use will not adversely affect the health or safety of persons residing or working in the neighborhood of such proposed use; and
- c) The proposed use will not be detrimental or injurious to property or public improvements in the neighborhood of such proposed use.

Sec. 15-3. Alternative compliance.

The landscape requirements are intended to set minimum standards for quality development and environmental protection and are not intended to be arbitrary or inhibit creative solutions. Site conditions or other reasons may justify the need to request an alternate method of compliance with the landscape requirements. The reviewing

authority, as specified in article VII, above, may alter the requirements of this section as long as existing or added landscape features of the development site comply with the intent of this article. Requests for alternative compliance shall be accepted if one or more of the following conditions are met:

- c) An alternative compliance proposal is equal or better than normal compliance in its ability to fulfill the intent of this article and exhibits superior design quality.

MOTION:

With regard to the request by the City of Hendersonville for a Special Use Permit with the following conditions:

- 1) *A fence not easily climbable as required in Section 16-4-22(d) shall not be required as it would interfere with access to the site by the City of Hendersonville Fire Department.*
- 2) *Alternative Compliance shall be granted in accordance with Section 15-3 for a reduction in the size of the required tree planting islands.*

I move the Board to find that a) the proposed use complies with the standards for such use contained in Article XVI; b) the proposed use will not adversely affect the health or safety of persons residing or working in the neighborhood of such proposed use; and c) the proposed use will not be detrimental or injurious to property or public improvements in the neighborhood of such proposed use.

(After the motion has been seconded, the movant should state the factual basis and reasoning for the motion. In doing so, bear in mind the considerations set out in Section 10-9 of the zoning ordinance.)

Remember: Staff suggest the motion be made in the affirmative regardless of whether it is your intention to support or oppose the issuance of the special use permit. This does not mean that staff is recommending approval of the application. RATHER, we believe it is better procedurally to approach it this way. Once you have made the motion, you should state your position as to the required findings. For special use applications, it takes a majority of affirmative votes to approve this application, if others are voicing support of the application, you should make it a point to state your position vis-à-vis the required findings since your vote, even standing by itself may represent the position of the Board.

EXHIBIT LIST

- Exhibit A – Special Use Permit Application**
- Exhibit B – NC General Warranty Deed**
- Exhibit C – Preliminary Site Plan**
- Exhibit D – 3D Renderings**
- Exhibit E – Landscape Plan**